



STATE OF HAWAII DEPARTMENT OF LAND AND NATURAL RESOURCES

STATE HISTORIC PRESERVATION DIVISION 601 KAMOKILA BOULEVARD, ROOM 555 KAPOLEI, HAWAII 96707 COMMISSION ON WATER RESOURCE MANAGEMENT

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KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

OAHU ISLAND BURIAL COUNCIL MEETING MINUTES

DATE: WEDNESDAY, JUNE 14, 2006

TIME: 11:00 A.M.

PLACE: KEY PLACE PROJECT

47-200 WAIHEE ROAD KANEOHE, HAWAII 96744

ATTENDANCE:

Members: Jace McQuivey, Chair Carolyn "Kehau" Abad

Mark Kawika McKeague, Vice-Chair Kalei Kini

Van Horn Diamond Andrew Keliikoa Alice Greenwood Kehaulani Kruse Aaron Mahi Linda Kaleo Paik

Absent: Charles Ehrhorn (Excused)

Cy Bridges (Excused)

Analu Josephides (Excused)

Lynette "Nettie" Tiffany (Excused)

Staff: Piilani Chang, Oahu Cultural Historian

Susan Yanos, Secretary

Adam Johnson, Assistant Oahu Archaeologist Vince Kanemoto, Deputy Attorney General

Guests: Thomas Shirai John Reppun, KEY Place Project

Matt McDermott, CSH Hal Hammatt, CSH Carolyn Norman Paulette Kaleikini

Dwight Yoshimura, General Growth
Tim Lui-Kwan, Carlsmith/General Growth
Ralph Makaiau, Jr., Kuilima Resort Co.

Sharon Thom, General Growth
John Behring, General Growth
Linda Rosehill, Rosehill & Associates

Pua Aiu, Communications Pacific Richard Paglinawan

Warren Soh Gil Riviere
Maria Pacheco KeAloha Kuhea

Brian Takeda, R.M. Towill Corp. Mike Okamoto, R.M. Towill Corp.

Dawn Chang, Kuiwalu Keith Kurahashi, Kusao & Kurahashi Inc.

Donna Camvel

June Cleghorn, Kaneohe Marine Corps Base

Cathleen Mattoon, Koolauloa Hawaiian Civic Club

Creighton Mattoon, Neighborhood Board #28/Punaluu Community Assn.

Mark Manley, Defend Oahu Coalition

I. CALL TO ORDER & ROLL CALL

Meeting was called to order by Chair McQuivey at 11:13 am. As council members introduced themselves, Yanos recorded those that were present. The majority of the members were present and quorum was established. Cy Bridges, Analu Josephides, and Nettie Tiffany were excused from today's meeting.

II. INTRODUCTION OF COUNCIL MEMBERS AND SHPD STAFF

SHPD staff introduced themselves. Mahi said a pule.

III. OPENING REMARKS

Chair McQuivey thanked John Reppun, Executive Director of the KEY Place Project, for allowing the council to use their facilities for this meeting. Chair McQuivey asked the public to sign in to make sure the record reflects all that attended the meeting and to introduce themselves when coming to testify before the council. Chair McQuivey asked the public to have courtesy towards everyone that is participating and to keep all remarks to the council and not to other members of the public. Chair McQuivey reminded the public that the council established a four-minute testimony policy. Chair McQuivey stated that there has been a request to take an agenda item out of order and will entertain a motion to do so.

Paik made a motion to move Item D under "Council Actions" ahead on the agenda and withdrew the motion when the people affiliated with that item were not present at that time.

IV. APPROVAL OF MAY 10, 2006 MEETING MINUTES

Correction by Chair McQuivey: Page 7, Insert the word "by" into the motion for the council to write a letter to Kuilima to be signed "by" the OIBC Chair Jace McQuivey.

Motion to approve the May 10, 2006 OIBC Meeting Minutes with the corrections. (Kini/Abad)

VOTE: ALL IN FAVOR. Motion carries.

V. ANNOUNCEMENTS

A. Informational presentation by Kuiwalu Consulting of an upcoming project in the Waikiki Ahupuaa, Kona District, Island of Oahu [TMK: 2-6-13: 1, 3, 4, 7, 8, 9, 11, and 12]

Dawn Chang, Kuiwalu, gave an informational presentation of an upcoming project in which Fifield Companies is proposing to develop a residential condominium project at the old Waikiki Wave location. They are proposing minimal excavation work on this project. They are currently going through the EA process and completing a cultural impact statement. The archaeological work on this project is going to be conducted by Cultural Surveys Hawaii (CSH). She stated that she has met with SHPD last month to inform them of this upcoming project. She has been engaged in some early consultation with possible lineal/cultural descendants to make them aware of the project. Kuiwalu is the cultural consultants for this project and would be happy to answer any questions or concerns about the project.

Kaleikini asked if the AIS plan would be made available to cultural descendants. Dawn Chang said that she will be working with the families recognized in the area to keep them informed. Kuhea shared his concern about two cultural descendants that were recognized by the council for the Waikiki area. Kuhea claims that Kana'i Kapeliela took money under the table to confirm these two descendants. Kuhea expressed his disapproval of the recognition of these two cultural descendants.

McQuivey stated that he will entertain a motion to move agenda items around.

Motion to move Item D under "Council Actions" ahead to address this item before the next agenda item. (Paik/Kini)

Greenwood asked for the reason why there was a need to move the agenda item ahead. Paik said that she acknowledged that the descendants relative to this agenda item had taken time off work to make a site visit in the morning and then came to this meeting and would like to give them the opportunity to speed up the process. Greenwood stated her concern about changing the set agenda when other members of the public were aware of the order of items on the agenda and came out to this meeting to wait their turn to speak on agenda items. Chair McQuivey said that normally he doesn't entertain a motion like this but he acknowledges that the descendants took time out of their schedule to meet at an early site visit and then came to this meeting...it is out of courtesy that he is entertaining such a motion. Chair McQuivey stated that he understands the concerns around this issue.

VOTE: 5 IN FAVOR (Abad, Kini, Kruse, McQuivey, and Paik); 2 ABSTAINED (Mahi and McKeague); 2 NOT IN FAVOR (Greenwood and Keliikoa). Motion carries.

B. Discussion on Mokapu MOUT Facility and pending reburials

June Cleghorn, Kaneohe Marine Corps Base, stated that she is available to answer any of the council's questions regarding the MOUT facility that is proposed to be used at Mokapu. McQuivey said that individuals of the council did make a visit to the site. Kini asked Cleghorn to clarify the situation. Cleghorn stated that the Section 106 consultation process was initiated because the Kaneohe Marine Corps Base is proposing to increase the number of training days at the MOUT facility. She said that Nalani Olds, one of the claimants for the Mokapu 'iwi kupuna, submitted a letter in opposition to increasing the number of training days at the MOUT facility. At this point, the command at Kaneohe Marine Corps Base knows that there is disagreement with the proposal and they have agreed not to do the increased number of training days but is still considering doing some training there. The base command has indicated that they are trying to work out some kind of compromise. Cleghorn said that she welcomes written responses from the council on this subject. McQuivey thanked Cleghorn for making a site visit available and asked the council to express any concerns.

Greenwood stated that this issue came before the council because she was made aware of the activities going on at Mokapu. Her concern is that when she did further research on the area, she found out that there are still many 'iwi that have not been reburied that originally came from the area where the MOUT facility is being proposed. Kruse shared her concern about the word "compromise" because it seems that it means that someone always has to back down. Kruse said that this is a known burial area...there should not be any kind of training or disturbance there. Paik asked what the descendants thought about this issue.

(Diamond enters at 11:35 pm)

Donna Camvel, a Mokapu claimant, stated that her family has a kuleana and a direct link to the Mokapu 'iwi kupuna. She said that she does not support the training facility at Mokapu. She

explained that she understands the need for the military to have this training facility but she has a kuleana to protect the 'iwi and mana of the Mokapu area and for that reason she cannot support the military's proposal. She stated that she implores this council, who has the power to make a difference in setting precedent, to do so. Abad stated that in terms of compromise, the families connected to Mokapu have done more of their share of compromise when it comes to the military presence in Hawaii. Abad went on to say that there have been many compromises that have been at the expense of Native Hawaiians and the family's request to leave this burial ground alone is a very small one.

Diamond stated that this council recognized two descendants for the Mokapu 'iwi and they have expressed their opposition to the MOUT facility. Thomas Shirai recognized Diamond for all his work on the council. Shirai shared with the council an act (Act 45) that was just passed through legislation that relates to historic preservation and the purpose of this act allows the state to impose civil and administrative penalties against people who have made a violation of the conditions of an approved mitigation plan, which includes monitoring and preservation plans. McKeague expressed his thanks to the people who have come forward on this issue and shared his own thoughts about his experience at the site visit at Mokapu.

Cleghorn clarified that there will be no vehicle traffic and ground disturbance in the area. She said that part of the Section 106 process allows agencies to ask the Advisory Council on Historic Preservation (ACHP) to give their opinion and if they agree to do so, then their opinion will be given to the Secretary of the Navy and eventually the Secretary of Defense. She clarified that the ACHP's opinion is only advisory. Abad asked if the council would be copied on that opinion; Cleghorn said yes. Cathleen Mattoon stated that she is the president of the Koolauloa Hawaiian Civic Club and has been cultural advisors in regard to this. She stated that they have not been made aware of all the correspondence and would like to be included to make comments on this matter. Cleghorn suggested that any comments be put in writing in order to make them known to all involved.

Kini stated his comments which stressed the importance of the claimant's feelings about the proposed MOUT training. Greenwood said that she believes that a letter needs to be written to state the council's position and address it to the military, ACHP, and OHA. Diamond suggested using this meeting's minutes to demonstrate the council's position and send a copy of it, along with a letter written by the council, to the necessary people.

Motion to adopt a stance, in the form of a letter to be written by the council with reference to the June 14, 2006 OIBC minutes, to be addressed to the Kaneohe Marine Corps Base, Advisory Council on Historic Preservation, and the Office of Hawaiian Affairs in support of the claimant's feelings not to have the military engage in MOUT training in the proposed area. (Abad/McKeague)

VOTE: 9 IN FAVOR. Diamond abstained. Motion carries.

C. Informational update by Cultural Surveys Hawaii for the Makaha Bridges Replacement Project in the Makaha Ahupuaa, Waianae District, Island of Oahu [TMK: 8-4-001:012; 8-4-2:047 & 045; 8-4-018:014, 122, 123; 8-4-08:018-020]

Brian Takeda, Mike Okamoto, and Matt McDermott informed the council about the project. Takeda said that the State Department of Transportation, Finance, and Federal Highways Administration are currently trying to replace two bridges in Makaha that have deteriorated. Improvements to the bridge would include various upgrades. They are currently drafting an environmental assessment and an archaeology inventory survey has been already completed. McDermott stated that the inventory survey results indicated the historic properties found within the project area and thanked Greenwood for her help in the process. McDermott indicated that

there were previously identified remains (believed to be Native Hawaiian) found during the inventory survey and a burial treatment plan is being written to address them. The remains appeared to be previously disturbed and none were found in situ. It is their proposed treatment to relocate the remains into a reinterment site at Mauna Lahilahi Beach Park. Paik stated that her stance has always been to preserve in place or keep them as close to their original location. Greenwood asked if the project would be affected by the problem that they've been having with the bathroom area and the sand going out and the water is coming in. Okamoto said that this problem has been one of their concerns. McQuivey thanked them for making this presentation to the council and acknowledge that they look forward to seeing the plan.

Council breaks at 12:23 pm. Meeting resumes at 12:35.

VI. COUNCIL ACTIONS

A. Informational presentation by Rosehill & Associates regarding Kuilima

Ralph Makaiau (Kuilima) introduced the team that is involved with this project: Rosehill & Associates, Keith Kurahashi (Kusao & Kurahashi, Inc.), and several kupuna who has a tie to the community. Makaiau apologized for not being able to attend last month's meeting but he was scheduled elsewhere. McQuivey, noted for the record, that the letter that the OIBC wrote to Kuilima stated that no one appeared at last month's meeting was incorrect and he wanted the record to reflect that Hal Hammatt did identify himself as a representative for Kuilima at last month's meeting. Hal Hammatt explained the archaeological history noted in the Archaeological Mitigation Plan for the Turtle Bay Resort which was compiled by Cultural Surveys Hawaii (CSH). Hammatt stated that this plan seeks to provide guidance and direction for mitigating the archaeological sites within the different development parcels. There were burials identified during various studies and CSH has identified 19 separate burials in the project area, of which most of them were found in sand deposits by the shore. There was a burial treatment plan prepared for by Kepa Maly in 1992. CSH's research shows that virtually all of the burials were disinterred, with permission from SHPD, and reinterred into a relocation site except for two burials which were left in situ. Hammatt summarized the archaeological research done within the project area.

Hammatt acknowledged that the 'iwi found in the original testing will be treated as previously identified and will come before the council and the 'iwi found during monitoring will be treated as inadvertent remains and coordinated with SHPD. He added that they would like to add a section to the report that deals with the treatment of burials to comply with the present statutes for this project.

Diamond asked how the developers arrived at that certain reinterment site. Makaiau stated that he has only been with the company since 2001 but what he understands is that the recommendation was made by the prior owner to SHPD and SHPD concurred. Diamond asked when that recommendation was made; Was it prior to burial laws coming into play? Hammatt said that he believes it was covered under the burial treatment plan that Kepa Maly made in 1992. Hammatt said that he knows that SHPD staff was involved in the entire process. He said there were also inadvertent finds in the 1980's. Abad asked how the burials were encountered. Hammatt said that one set of scattered remains were found by the hotel, another set of remains were found during digging operations behind the beach to the east of the hotel, all of the other remains were found during archaeological excavation. Abad asked if the archaeological excavation was during inventory survey. Hammatt said yes. Abad asked if the burials were found during inventory survey therefore they should be considered previously identified burials. Hammatt said yes by today's standards but these were encountered during the 1980's when burial laws were not yet in effect. Abad said that the council is trying to establish a clear record

of the burials found within the project area. Abad appreciates CSH's work to compile an extensive history of the project area and thanked them for their efforts. Abad stated that the council is trying to get a handle on what's going on here and asked what stage of the review process they are in right now. Hammatt explained that they are trying to take something that was done over 20 years ago and find it difficult to put it in categories in which we would understand today that would comply with the present burial laws. Hammatt said that he appreciates Abad's comment and noted that the one thing they haven't done is to go through SHPD's correspondence to find more information about the treatment of the burials.

Abad reiterated her previous question that could probably be better answered by the Department of Planning and Permitting (DPP) and SHPD which is: Where in the review process are we in, in terms of issuing permits? Abad also asked: What would be the appropriate message for the council to send? What would be the appropriate area of purview over which the council would have some kind of comment? Hammatt stated that CSH met with Chris Monahan (SHPD) at the beginning of this process (earlier this year) and he suggested that they prepare this mitigation plan. He also stated that he would not approve any permits with the exception for a small project related to Alpha Road until this mitigation plan was reviewed and approved by SHPD. McQuivey asked if there was anyone in the audience that represented DPP. Chang stated that she received a call from Kathy Sokugawa's office (DPP) inquiring about the letter that Chair McQuivey wrote to their office and said they would try to have someone come to today's meeting on behalf of their office. McQuivey said that the letter was also addressed to OHA but acknowledged that there didn't seem to be anyone present at this meeting representing OHA.

Greenwood asked how their anticipated development would affect the burials already identified within the project area. Hammatt said that they wrote this plan to minimize the effect on the archaeological sites and the areas where they suspect is burials. Abad asked for clarification as to whether or not the late 1980's MOA that was signed with the Office of Hawaiian Affairs regarding burials for this project area was considered at all or being followed. She went on to say that she believes that the council's stance is that subsequent burial laws have been passed which afford SHPD and the OIBC's specific jurisdiction over matters that have been addressed in the OHA MOA. Abad asked Kuilima to clarify their stance on the validity or lack of validity of the MOA or whether it's being followed. Makaiau said that they have been instructed to work within the perimeters of the unilateral agreement (an ordinance mandated by the City & County of Honolulu which has conditions that the Department of Planning and Permitting responds to and will report back to the City Council). Keith Korashi added that in terms of the 1980 MOA they have been following it with respect to the time it was put in place, however, with the new knowledge of the burial council there has not been any recent burials. He stated that their intention is to report back to the council any finds and will work with the council on a burial plan should there be any new burials discovered.

Abad stated that a key issue that arose in earlier discussions is that the council is concerned about the adequacy of an inventory survey with regard to appropriately identifying possible burials within the project area. As she understands, SHPD is taking a look at the adequacy of the total number of studies that have been done at this time. She said that they would like to examine the issue of whether or not burial sites have been adequately identified in the project area. She said that if these inventories haven't been done in a comprehensive enough way, then they would like to suggest to SHPD that further inventory be completed. She stressed the point that since past inventories was done in a patchwork nature and prior to burial laws being established that it would seem appropriate to address the issue of the adequacy of the inventory survey, in terms of burials. Korashi said that they're hopeful that this mitigation plan will address the council's concern and it will be turned into SHPD for review very soon. Hammatt said that the mitigation plan was prepared to allow SHPD to answer the council's concern.

Diamond said that the MOA is an important document because it is pertinent in relation to the burials within the project area. Korashi said that they will research it and make a copy of it for the council and SHPD's information. Abad noted that she has read the MOA and it reflects the thinking that most of us would consider highly offensive today, it allows for intrusive study of remains for no particular compelling reason other than scientific interest, and it allows for disinterment in pretty much all instances. Given the council's previous discussion, Abad's personal opinion is that she doesn't feel that it is the kind of MOA that this present council would support.

Paik asked about the cultural/lineal descendants role in this project. She asked if they are actively involved or if there was a search for them. Hammatt said that in compliance with the burial laws, if burials are identified from this point on then the legal advertising process would apply. He went on to say that there is a long history of active members of the community involved with the development plans for this project.

McKeague asked what the timeframe was for the archaeological review. Korashi said that the property was rezoned back in 1986 and they're currently going through a subdivision process. Greenwood asked if there were any descendants that came forward for the burials that were found previously. Hammatt said that there was a search made but it wasn't in the way that would be done today. Abad asked if there has been active involvement in community members to identify known burial sites within the project area. Paik said that there should be a wider search done to include people outside of the immediate community. Diamond shared his thoughts about people who might have an affiliation with burials in the project area.

Cathleen Mattoon stated that she wrote a letter to the council as soon as she saw this item on the agenda. She said that the Koolauloa Hawaiian Civic Club would like to be consulted on this project. Chang clarified that to be recognized as a cultural descendant to a set of remains you would need to apply as individuals rather than a group. Paik said that Kuilima could simply acknowledge the civic club's desire to be involved with this process. Abad explained the various ways of Hawaiian groups being involved in the consultation process.

KeAloha Kuhea asked about the police report that goes back to 1980 to the present looking for 'iwi kupuna not genealogy. He said that since the burials were inadvertent discovery it automatically falls under the council's jurisdiction. He expressed his problems with the police report and Kuilima.

Thomas Shirai shared his thoughts about the history of the project area. He said that he is glad that there is a more comprehensive study done now. He stated the importance of respecting and listening to our elders. He said that he would like to see the current security force at the hotel keep all the people away from the area that doesn't have a reason to be there.

B. Burial Treatment Plan for the Ward Village Shops Project [TMK: 2-3-5:013-017, 022, 023] Honolulu Ahupuaa, Kona District, Island of Oahu

Dwight Yoshimura requested that the council defer Items B and C of this meeting's agenda until next month's meeting because there was a typographical error in the notification to the descendants and General Growth Properties (GGP). They will be readvertising a corrected notification.

Paik stated that she had a difficult time visualizing where the proposed burial sites would be in conjunction to the building and how it would impact the building. Yoshimura stated that when they do the official presentation, they will have a model available for the council to view. He invited the council for a site visit of the project.

Yoshimura informed the council that Mr. Jeff Dinsmore is no longer with GGP. He introduced the individuals that are working with GGP on this project.

Yoshimura directed the council's attention to a picture of the burial site on Kamakee/Queen Streets. He stated that the site was in terrible shape and GGP took it upon themselves to clean the area. Chang stated that she spoke to a representative from HCDA, who assured her that the 'iwi buried at their property had not been forgotten and that HCDA has plans to do something with the area but it will not happen until 2008. She said that the HCDA representative also wanted the council to know that they do monthly visits to the burial site. Yoshimura added that GGP will continue to monitor the area on a regular basis until HCDA moves forward with their plans for improvement.

Yoshimura stated that in a previous council meeting, there was a question about why GGP did not do these inventories before the trenches were done on the project. He stated that they were following the direction of HCDA. He added that GGP was not aware of these issues and was caught between an internal State agency-type of issue. But they did get approval from HCDA to proceed with construction.

Yoshimura concluded his update by stating that GGP engaged the services of PBR to work on the various proposals for the landscape of the burial area.

C. Recognition of Lineal/Cultural Descendants Claim Burial Treatment Plan for the Ward Village Shops Project [TMK: (1) 2-6-022:009] Waikiki Ahupuaa, Kona District, Island of Oahu

Chang referred the council to her May 9, 2006 memo that was included in the packet that was sent to the council members. Because all the applicants listed in her memo were recognized by the OIBC on July 9, 2003, as cultural descendants to Native Hawaiian remains found at the Queen Street Extension Project and the Wal-Mart Project in the Honolulu Ahupuaa, the department recommends approval of recognition as cultural descendants to the remains found at the Ward Village Shops Project.

Greenwood asked if any of the applicants appeared before the OIBC. Chang stated that several of the descendants attended the informational meeting at GGP in May 2006 and some of them attended past OIBC meetings. Chang noted that representatives of the families were present at today's meeting.

Motion to accept the staff's May 9, 2006 recommendation memo to recognize Applicants 1-23 was made and seconded. (Diamond/Greenwood)

Paulette Kaleikini thanked the council for recognizing her family.

KeAloha Kuhea stated that he submitted his claim in response to the notice printed in a June 11, 2006 newspaper. He stated that he was confused by the notice because the ad read that the Ward Village Shops Project is located in the ahupua'a of Honolulu. He stated that some people refer to the project as being in "Waikiki". He suggested that maybe the publication was incorrect because his claim was in Honolulu for Kamakee and Piikoi, but OIBC said that was Waikiki. Now the publication says that this is "Honolulu". He said he is confused by the metes and bounds description and the ahupua'a that the council is using. He continued to say that in Honolulu, he submitted a claim to this award using the same geneology that he used for Kamakee and Piikoi.

Kuhea acknowledged that he is a party being confirmed. Kuhea stated that he talked to Chang on the phone and she told him that he will not be able to come before the council this month—he

would be on the agenda next month. Chang noted that Kuhea did not make any appointment to meet with her and expected her to drop what she was doing to meet with him. She said that she spent 45 minutes with him discussing his claim and as a result she was late to another commitment. She started to review his documents when he called her a week later to tell her he wanted to submit additional documents. She stated to him that she would wait for him to submit all his documents before she resumed her review; he submitted his documents a week before today's meeting, so she was unable to add it to today's agenda. Chang added that SHPD is making the effort to accommodate Kuhea's needs, but he needs to allow the staff time to do the review.

Kuhea stated that he submitted his documents to SHPD last month for the Ward project. He was not able to submit his documents for the WalMart project to SHPD because he was involved with the Aki Sinoto contested hearing and was told he could not submit his claim until the hearing was completed. He reiterated that there are two claims with the same genealogy for two different projects in the same metes and bounds of Honolulu.

VOTE: ALL IN FAVOR. Motion carries.

D. Correspondence from the University of Pennsylvania Museum

McQuivey summarized the letter that the council received regarding a skull that was in the University of Pennsylvania Museum's possession. McKeague stated that he has been contacted by Eddie Ayau of Hui Malama I Na Kupuna O Hawaii Nei to consult with the council regarding a skull that a student that the University of Pennsylvania felt in his na'au that this kupuna was from the Hawaii Island. He wondered if the council wanted to entertain a motion to pass on the jurisdiction matter to the Hawaii Island Burial Council or if this council wanted to have a discussion about the appropriate treatment of the skull. Diamond stated that he did not have a problem with passing on the jurisdiction and made reference to another situation that happened in New York. His thoughts were to see if OHA would like to be involved and go to Pennsylvania to fully assess the situation.

Paik shared her thoughts on the matter. She believes that the kupuna have been away too long and that they should be brought home. Greenwood suggested that the council form a group to go there and that the kupuna can or will draw you in. McQuivey asked if McKeague will coordinate a meeting and obtaining funding (possibly from OHA) to see what can be done to bring this skull back home.

E. Discussion on Council Direction, Goals and Objectives

(Mahi left the meeting at 2:08 pm.)

Diamond requested that the documentions that are provided for this agenda item is attached to the minutes and the remarks be transcribed verbatim. McQuivey agreed that the minutes should reflect Diamond's speech verbatim.

Please refer to the attachments for Mr. Van Diamond's verbatim speech and documentation which was communicated during this agenda item.

F. Status Update on Wal-Mart case

McQuivey stated that he had sent an email to the council members regarding a reply from Bill Cooper, Attorney General advising the hearing officer, about the correspondence that the council has been copied. He clarified with Bill Cooper that the council will not be receiving any more

correspondence on the Wal-Mart case. He said that the council does not having a standing in this case.

KeAloha Kuhea said that he has gotten advice to re-file his claim for this case which was previously denied by Kana'i Kapeliela. He said that there is a conflict of interest in the metes and bounds of the property. He believes that the people reviewing his claim are discriminating against him. He said that if they cannot review the documents within a week then they are not qualified to be doing the review.

Paik noted for the record that the OIBC is not responsible for inadvertent finds (it falls under the department's jurisdiction) and that the OIBC is not the genealogists reviewing the claims...the council goes by the recommendation of the department.

Greenwood noted for the record that Chang recently joined the department and when there is mention of names or neglect, she takes offense to that. In terms of genealogy, the department has an obligation to verify the documents being submitted to verify a descendancy claim and she does not believe that someone's genealogy can be verified within a week. She went on to say that the department needs to have sufficient documentation showing that the person making the claim has a direct connection to the burials and be able to name the individual burial there. She said that nobody in the department can turn around and say that they recognize the person making a claim just because that person is hounding the department staff because that is wrong. She said that as OIBC members, they need to protect the staff and themselves. She said that accusations relating to past staff and OIBC members are wrong.

Diamond added that previously there were several staff members in the History & Culture Branch and presently Chang is the only one working in that branch. He said that to expect the same kind of productivity when there's only one person working in that branch requires understanding. He stated that there is a point about the metes and bounds of the Waikiki and Honolulu Ahupuaa's and should be further examined.

G. Discussion of the Department's collection of 'iwi

McQuivey stated that there is nothing new to report and that there is no further need to keep this item on the agenda.

H. Status Update on Section 106/NAGPRA Correspondence

Greenwood explained the three correspondence letters that she reviewed this past month. She stated that she spoke with Laurie Lucking regarding a golf course the Army would like to put in and she was told that there will be cultural monitors present in case of any inadvertent discoveries. She stated that she attended the Advisory Council on Historic Preservation's workshop in May regarding the draft policy statement regarding consultation matters. She shared with the council her thoughts on the draft policy statement and what she observed at the consultation meeting that the ACHP held.

VII. SHPD INADVERTENT DISCOVERY REPORT

Chang noted for the record that there was a typographical error on the agenda regarding Item VII – B. The inadvertent discovery of human remains in the Kapalama Ahupua'a was not made at a heiau; the discovery was made at the Keanakamano Restoration Site.

Chang referred the members to the monthly summary report of inadvertent discoveries of human skeletal remains, which was previously provided to the members in their packets. She read into the record the contents of her June 7, 2006 memo to the council.

VIII. ADJOURNMENT

The meeting was adjourned at 3:15 p.m.

Respectfully submitted,

Susan P. Yanos, SHPD Secretary and Piilani Chang, SHPD Cultural Historian

A. VAN HORN DIAMOND

14 June 2006

TO: Mr. Jace McQuivey, Chairperson [Iku Hai] and Members, Oahu Island Burial Council (OIBC), Hawaii State Department of Land and Natural Resources (DLNR)

FROM: A. Van Horn Diamond, Kona District Representative [Elele], Oahu Island Burial Council (OIBC), (DLNR) State of Hawaii

SUBJECT: [Agenda Item] "VI. Council Action. F. Discussion on Council Direction, Goals, Objectives." June 14, 2006 Meeting of the Oahu Island Burial Council. re/ OIBC — Organizational Vitality

1. Concerns/Discernments
2. Comments/ Manao
{An Exit Appraisal}

Transmitted herewith is the aforesaid subject. Selected documents have also been provided to assist the desired communication; likewise, to abet the desired outcome of this writer. Specifically, the OIBC is statutorily-enabled to fulfill a public purpose. It is hoped the information, ideas, opinion and observations shared will assist the Oahu Island Burial Council to realize both its potential to do and its public purpose.

Accordingly, we herein respectfully request and appreciate your authorization of the following:

- (1) This written communiqué and the referenced "selected documents" become part of the minutes of the OIBC meeting of June 14, 2006; and, attached to the minutes.
- (2) The oral remarks of this Kona District Elele, on the aforesaid subject, to the Oahu Island Burial Council, also become part of the June14, 2006 meeting's minutes; and, transcribed, for inclusion, verbatim.

Mahalo for your openness and the courtesy manifest in letting me talk with you today. Hopefully, the ensuing remarks do not disappoint!



E OLU OLU MAI IKU HAI McQUIVEY & OIBC MEMBERS:

For formal purposes of identification, introduction and record, my name is A. Van Horn Diamond, Kona District Elele, Oahu Island Burial Council.

We herein seek to provide meaningful comment regarding the workings of the Oahu Island Burial Council so to enable and empower the OIBC in realizing its public purpose. Mahalo for this opportunity to contribute to the greater good.

AN OPPORTUNITY TO ACKNOWLEDGE & APPRECIATE

I choose to begin by noting my sincerest and deepest appreciation for those who've made the work we, the Oahu Island Burial Council, do "do-able, responsive, responsible and pursuant to our public purpose and mission" --- ever striving, throughout, to achieve balance and equity for both "WE, THE LIVING", and, "THOSE WHO NO LONGER CAST A SHADOW".

I start with the staff toiling daily in the "trenches"--- often frustrated but nobly driven --- so that respect for the shared public mission and reverence (in the caring) for the Kupuna prevails.

An especial Mahalo to the Deputy Attorney Generals who provided us legal counsel. Their guidance has kept us consistently responsive to our statutory provisions and the administrative rules --- no matter the challenge encountered or the emotions which can distract even derail. (Thank you Vince --- our current Deputy A.G.!)

The Hawaii State Legislature I applaud with genuine respect, thanks and aloha. They seriously considered what the OIBC communicated, as the OIBC; and, they usually responded favorably. (Of course, there were moments when the State Administration, via its DLNR directorship, opposed legislative audits of SHPD and the Burial Sites Program. As private citizens, myself included, many with Island Burial Council ties and/or concerns supported the legislative inquiry and appraisal as conducted by the Legislative Auditor.) Unfortunately, too, for a time, the Department seemingly chose to "uwehi, ami, and slide" versus addressing identified shortcomings.

The point? Despite the foregoing, Administrations did try to keep the work we do both funded and operative. Often, however, to learn where the Administration stood came down to discerning their commitment from the behavior not only its verbiage --- total performance!

It's now time to extend a Mahalo to all who've come before the OIBC representing public as well as private sector development projects. With few exceptions, the presentations, liaison response and follow-through has been consistently candid in the words, in the affirming actions of their follow-through.

Moreover, it is noteworthy to assert that the goal of greater Hawaiian Community access and participation in the OIBC process is due to initiatives which have occurred, since the Waimea rock fall, North Shore, Oahu.

Most importantly, it is my hope there will be more Hawaiian Community involvement (in particular, more Hawaiian family participation) in the proceedings of the Oahu Island Burial Council --- so that the surrogate role of the OIBC, Hui Malama I Na Kupuna O Hawaii Nei et al is lessened, preferably deleted, for just cause. Indeed! family kuleana is a priority and needs to manifest --- more and more.

To each and every OIBC member, past & present, I convey my unending regard. Without your demonstrated commitment to address, engage, ponder, determine, decide and "Onipa'a" (1) so that respect for the departed Kupuna prevails (2) that reverence be manifest throughout in the caring and their reinterment.

Important to me is the deep-down belief that my time of OIBC service has been blest because of the OIBC membership. OIBC members are dedicated, insightful, sensitive and caring. Their behavior and communication confirms their individuality and the independent thinking of each. I also note that when OIBC members do choose to act this is done on their terms and conditions. (When such human character gathers, by choice, the organizational dynamic is such that "Lokahi and Onipa'a" can happen for the highest good.)

A very important reality of my time as OIBC Chairperson is I believed in my Council colleagues. I respected each member's sense of proportion, balance; their direction, perspective and perception. Interestingly, their collective decisions reflected a consistency --- usually quite straightforward, sensitive, but, strong!

Our recent lineal descendent decision (2005 Wal- Mart) is a good example. Remember, we were asked to reconsider? The Council did! For good or for bad, the vote did not change per se.

That is, the Department, via its SHPD personnel, failed to provide substantive data to dissuade the OIBC away from its decision to recognize the Keanaaina Ohana. Consequently, I am at ease with the process and the OIBC determination. But, there's an even deeper regard I hold for all with whom I've been blest to have served. I call it the "Na'au" fact.

My OIBC time has both shown and taught me that profoundly pertinent and pivotal to OIBC determinations and decisions is what Commissioners bring to the table from within themselves; and, my experience strongly notes that it is the Na'au which generates the choices manifest. Clearly, they carefully appraise the process used, the data accessed, the testimony of experts, interested persons, staff findings and recommendations. But, it's this compendium of data in combination with the Na'au which remarkably proves to be poignantly on-the-button and consistently reflective of our charge, revere Na Iwi Kupuna.

Hence, fellow OIBC members, a heartfelt thank you for the many lessons you've taught me; the caring you've given to the work without pause. I pray too you never permit the western form of process and/or the logic they employ to depreciate and/or take away what keeps the work of the OIBC "Hawaiian", i.e. the use of and respect for the Na'au.

Notwithstanding the on-going efforts to assimilate Hawaii into the western ways, it will not happen so long as (1) we deny it license and (2) we insure that the Hawaiian civilization continues to both affect and effect the human interface of Pae Aina O Hawaii Nei throughout this 21st Century. In the work of the Oahu Island Burial Council facts and figures are relevant. But, the Na'au is Hawaiian. The Kupuna is Hawaiian. The Aina is Hawaiian. No Na Kau A Kau.

On the pages to follow, there will be an honest effort to provide you with what we discern and believe needs examination by the Oahu Island Burial Council. The intent of these identified discernments is to assist in improving the performance of the Oahu Island Burial Council. N.B. This person is "AOK" if there are readers of this material who disagree with this writer's views etc. What is important is to delineate what's been discerned and proffer it for your consideration

so to enhance the capacity of the OIBC to perform.

ORGANIZATIONAL INTERFACE

A critical fact of organizational vitality is cooperation and coordination between and among functioning units. Presently, this seems to exist. However, the test will be for how long, and, what happens to sustain this vital interface?

I am specifically referencing the "de minibus" communication and the "hot-n-cold, ebb-n-flow" kind of working together which occurred between the Archeology Branch and the Burial Sites Program. The cause, like the Irish Rebellion, got lost so that avoiding cooperation governed --- to the disadvantage of the Oahu Island Burial Council.

It's why I noted, for the record, as OIBC Chair, all correspondence pertinent to OIBC work, generated by the Archeology Branch, was presumed to have Burial Sites Program concurrence. If concern existed, the staff needed to resolve matters. Otherwise, it would need to be raised and noted for OIBC awareness and possible intervention.

[POINT] There's no room for deprecations of the disciplines and the personnel. It is an incumbent responsibility and duty to keep the information and insights freely flowing, to the advantage of the Oahu Island Burial Council, especially when decision-making is forthcoming. It's also the incumbent responsibility of each OIBC member not to permit the taking of sides. Arguing and/or engaging in vigorous discussion is not what I reference here.

There was a time when it was Burial Specialists/Culture & History Branch personnel versus Archeology Branch personnel with the clerical employees thrown in as an added contingent. It's my understanding the carrot used to sustain the divisiveness included remarks like the OIBC was Hawaiian-oriented and Archeology was a western scientific discipline "neer the twain shall meet". The working together didn't have a chance in such a context. Worse, the OIBC got distracted and diverted.

Ergo, this is an admonition and a real "smoke detector" issue. Meaning?

[POINT] The OIBC must demand the best thinking and reasoning from all staff and their use of their related discipline and/or area of study. With this presumptive demand and/or expectation operative, the OIBC must, in turn, assess, engage, seek clarity to enhance its deliberations; to arrive at specific determinations as to findings etc; then render "en banc" decisions as the Oahu Island Burial Council. The decision is not because archeology or anthropology or whatever says so. It is a decision reached through the encouragement of openness and demanding the best from all participants!

ORGANIZATIONAL CONTINUITY AND CONSISTENCY

Clearly, the Oahu Island Burial Council composition changes due to Gubernatorial appointments (Governor-nominated & Senate-confirmed), expired commission terms, new nominees recommended from the Hawaiian Community via recognized Hawaiian organizations; and, for now, how the State Administration, via its DLNR/SHPD management, discerns and provides administrative support to OIBC.

For me, an aspect of ensuring continuous, consistent quality staff support is to establish a core staff in terms of needed operational disciplines and determining a staff position count. Presently, the overwhelming worker count is "civil service exempt" positions.

The reasoning seemingly used to justify "civil service exempt" positions vs "regular civil service classified "positions is the former pays better. DHRD and DLNR continuously contend that the regular civil service classified positions will result in current positions being repriced down, and, the loss of the experienced incumbent personnel. But, it is my personal observation and assessment that both DHRD and DLNR lacks the commitment and energy to produce a core staffing wherein the positions and the incumbents enjoy appropriately priced, regular civil service classified positions. Restated? I have not yet discerned an administration attitude enabling the establishment of regular civil service classified positions, priced at least at the current pay scale --- into which incumbent personnel could be grandfathered into & red circled for compensation purposes at the higher pay rate --- until incumbent qualifies by added learning and on-job experience. (This specific employee reference assumes the incumbent worker presently wouldn't readily qualify for the proposed repriced position. I believe the civil service system does provide for and/or enable personnel to function at the required level while accumulating the experience and study for formal classification upgrade. Above all, it addresses the continuous palaver that this job security matter for staff cannot be responded to.) Whereas, a new employee, who qualifies for the newly described position, would start at the established classification and pay grade.

This reluctance and/or resistance suggests one or more the following attitudes may be preventing this situation from being properly fixed, i.e., administratively avoiding the establishment of a "core staffing".

- 1. Control and holding the staff submissive and/or subject only to what the Administration permits --- not what the OIBC may need to function better or to do its job.
- 2. Employment rights are limited. Tenured employment does not exist. Hence, staff survival rests on satisfying the administration directive; and, maybe OIBC!
- 3. Redirecting the Department priorities is better served by the current employment situation, i.e., civil service exempt positions --- be it for reorganization purposes or to implement a budget cut.

[The three possibilities are basic to organizational order, stability, and ready transitions. But, in terms of agency priorities, the foregoing, by its nature, is apt to act diffidently toward the OIBC and its HRS-described mandate.]

Let's look at core positions being regular civil service and their value to OIBC; and, it being a requisite for staff support.

First – Regular Civil Service Classified positions and their incumbents are not readily dislocated, discharged or even reassigned. This is because, in "de-fund" situations, civil service exempt positions & incumbents are the first to be terminated (not retained) --- unless managerial rationale justifies the retention. Further, regular civil service positions and incumbents are apt to be somewhat protected per the applicable public sector "collective bargaining" contract. Said contract and certain stat

Said contract and certain statutorial rights can protect the incumbent worker. For example, the collectively bargained contract will have a provision governing "lay-offs". It usually also has a contract proviso relating to grieving certain employer acts as well as omissions. Adjudication is possible via the courts or a grievance mechanism ending in the hands of an arbitrator --- presuming employer violation.

Second – The Civil Service System, augmented by the Public Sector Collective Bargaining Law, continues to be the institutional deterrent against political machinations. In the yesteryears, this was called the "Spoils System". For example, back then, if you campaigned for the Governor and he is elected, the Political Party rewards with a regular government job. Another type of situation under the spoils system is what's become known as "nepotism".

Of course, today, there are deterrents as the Ethics Commission and the Campaign Spending Commission etc. But, if there were no civil service system with processes etc., would there be no spoils system and its attendant behaviors?

Regular civil service classified positions and incumbents still adhere to the "Chain of Command, Programmatic Direction & Supervision" etc. However, they are in the system to do the work in a career-premised orientation and environ. That is, they don't have to help a Division Chief bartend a political fundraiser; or provide free "cha- lang -a-lang" Hawaiian Music at a political event for a prospective political candidate; or, to clean up a candidate's headquarters after election night — to keep their job or to get/garner a pay raise. But, isn't the focus supposed to be on doing the work with integrity?

Third – The current system forces incumbent personnel "to be caught in a real hard place" almost every work day. This is because there's no real job security. Moreover, competence per se is not necessarily relevant. It is not necessarily even a relevant factor.

[POINT] (Hence) There is the great need to provide the program and personnel connected to the OIBC function, mission and purpose with a Job Security presently unknown to them.

Two areas need to be referenced for comment.

Briefly, it is critically important to insure that the Deputy Attorney General assigned to provide legal counsel is supported administratively so that availability and access for OIBC is continuous, consistent. Clearly, this observation is applicable to the Island Burial Councils of Hawaii, Kauai, Maui and Moloka'i as well.

Next, the Island Burial Council itself needs to be composed, obviously, pursuant to what the law delineates. Yet, within the constraint of the referenced statute provisions, it is pivotal to develop a way of making sure the Council membership itself has balance. Clearly, for me, institutional memory is a priority so that past, present, future remain linked and transcending. In turn, the balance and equity being there is enhanced. Therefore, in the selection of OIBC members, a priority issue is to make sure the OIBC has its institutional memory so to assist its deliberations and decision-making. Furthermore, the institutional memory has a Na'au aspect to it.

ORGANIZATIONAL OUTREACH

The OIBC needs to plan and program itself so to include conducting some of its regular monthly business meetings away from the DLNR Board Room --- and out in the community. The OIBC

has a responsibility to educate and inform both the Hawaiian Community and the larger Community about the work it does; and, the departmental support accorded the OIBC.

Perhaps 2 – 4 out 12 monthly meetings per year might be scheduled. Of course, the OIBC and its staff support must develop access to available networks for kokua in promoting community attendance. Existing staff cannot be expected to accomplish such an undertaking alone. They will need kokua.

Notwithstanding the challenge of such a start-up, this initiative is pertinent to the long-term. More precisely, this is an effort intended to outreach and encourage greater Hawaiian family participation in the care, custody, reburial of the Kupuna. Additionally, the larger community needs to learn what OIBC does and how the Oahu Island Burial Council functions.

Lastly, the general public and the Hawaiian Community learns about the Oahu Island Burial Council via news media reporting, media commentary, and street hearsay. Hence, the public is developing its understandings about OIBC from meanings furnished by persons other than the OIBC.

[POINT] The Oahu Island Burial Council has a responsibility to itself and its public purpose to communicate outwardly who the OIBC is; what it does and why.

ORGANIZATIONAL PPBS

There must be an on-going conversation between OIBC and SHPD regarding the OIBC function as related to/with SHPD Planning, Programming and Budget. Otherwise, how can OIBC be truly supportive as an advocate for SHPD funding etc.; and, SHPD responding to identified OIBC needs?

Further, the State Legislature, I suspect, will likely tire of simply funding without clear, concrete evidence of substantive performance as to results, with personnel and dollars appropriately allocated, proficiently used and spent, fully accounted for. It is also obvious that, in due course, there also will be legislative expectations as to direction in terms of goals/objectives pursued/achieved plus "the next step".

A starting point in this area is forming a Data Base, including a time motion schema, which can help tell (1) the frequency & volume of the kinds of situations encountered (2) the timelines to receive, examine, assess and dispose per project etc. (3) time per duty per incumbent staff allocated/actual/differential and the cost.

Although this is broadly depicted, it is still one of the critical pieces in developing the needed staff and OIBC capacities to perform well. Accordingly, I have included a sample form which can be used to develop this pivotal organizational development piece.

The OIBC has been briefed just once about the SHPD Budget. This was an initial overview by Holly McEldowney (Acting SHPD Administrator). This needs to be an on-going subject for OIBC awareness. OIBC can be helpful in accessing needed income via legislation.

FUNDING/DEVELOPMENT

Mid-summer 2000, I visited Washington, DC while in transit to a funeral in Rhode Island. I learned there were dollars available and accessible for use in advancing what OIBC does. The sources were the US Department of Interior and the Administration for Native American Programs. Collectively, there was a potential funding access of approximately \$500 - \$600 Thousand for such activities as (1) upgrading and a catch-up effort of existing record files of burial sites and recognized descendants. The initial file was halted due to the termination of a funded computer operator-type position. Subsequently, this project ended because the equipment was obsolete (Wang).

These findings and proposal to seek the available funding was submitted to the DLNR administration — in writing. Also, a second proposal was submitted. It proposed the establishment of an Executive Administrative Assistant to the DLNR Director. The incumbent would have the job of identifying funding sources, initiating and developing a liaison to funders, and developing proposals to access the identified funding sources, public & private. The first target and effort would be to gain funds for SHPD, in particular, the Burial Sites Program for the OIBC and the other Island Burial Councils. Further, an individual was identified for the position. One of many cogent and/or relevant reasons for recommending his selection to start this initiative was the fact of his personal access to resources operative in West Wing of the White House.

The Administrations at the time did not opt to pursue the proposals.

Nevertheless, this approach and effort, albeit a bit confounded by the Iraq/Afghanistan situation, still has potential to underwrite and thereby advance the work of SHPD and the Burial Councils specific. But, what was there before is not apt to be so. It'll mean starting anew. But, the incentive is a dollar leveraging logic.

For example, the State Legislature might be more apt to fund a \$200 K in a match for an \$600K-\$800K federal program grant. But, again, this requires commitment to the work, networking & outreach as well as support to identify, propose, access, receive grant dollars so to advance the public purpose and mission.

Noteworthy is my belief in the OIBC. The OIBC has very talented members with skills beneficial to the programmatic and budgeting proficiencies needed for public grant dollars as well as to assist SHPD improve its PPBS functioning. OIBC members can also assist the planning needed to move forward.

Capacity-building the overall effort with OIBC talent is a do-able outcome. It does demand investing in the time needed to take prudent, measured start-up steps. Still, this is something which can further the work of the Island Burial Councils, especially OIBC with the plethora of Oahu challenges. Above all, please don't lose this by default!

Another two areas needing attention are: (1) Designing a strategy to encourage greater family involvement in the reburial of Kupuna. Such a strategy, I sense, will need to include an education component as to process as well as protocols and rites (depending on the family & its awareness.

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Another dimension will be ways to encourage and support their stepping forward to assume the kuleana. (2) Funding to staff and equip the ability of SHPD to properly and thoroughly record all burial finds, reinterments, recognized descendants per identified burial site --- so to protect the reburied Kupuna. (3) Developing a program for the maintenance and protection of all burial reinterment sites against abuse, misuse and ignorance is important. For example, in 2001, in the West Loch area, a burial platform had become a combination skate-board ramp and place for odds-n-ends type stuff. Another was a burial platform at Hickam where the rebar in the four corners were in clear view, the surrounding flora was dying, and the sand from within the platform had been extricated by a nation of ants. The platform had become the aina of this nation of ants.

ORGANIZATIONAL STANDING OF OIBC

The recent lineal descendant appeal case has given me much pause. Where do I start?

I have provided you two letters to Mr. Peter Young, DLNR Director/LNR Board Chairperson. I recommend you read them at your leisure; likewise, the OIBC minutes of the October 2005 meeting.

Earlier, I referenced my sense of ease when the OIBC, not once but, twice accorded recognition, despite the staff-furnished data and related opinion to this honorable body. In fact, the OIBC received manao from the Kaleikini Ohana. I believe manao was provided both in "closed session" and the open session of the February 2006 meeting, consistent with the applicable provisions of the law (HRS & HAR). But, the OIBC acted.

It (the OIBC decision) was appealed. N.B.It seems DLNR, presumably with Attorney General advice, took up the appeal. The appeal was heard by an appellate body, within DLNR, established to consider Island Burial Council decisions. But, this appellate body, heretofore, only heard and rendered decisions regarding Burial Council decisions related to "in situ" vs "relocating" reinterments --- not appeals about lineal descendent recognition.

No explanation was furnished the OIBC until after the appellate body had rendered its determination.

Nevertheless, the two letters to Mr. Peter Young sought formal Attorney General opinions about (1) whether or not I could formally serve, without prejudice, on the panel.(2) who and how the OIBC, individually and collectively, was represented in these appeal proceedings. [POINT] No letters of reply from Mr. Peter Young have been received. The date of the first letter to Mr. Peter Young is 10 June 2005. Hence, on letter #1, it is now 12 months and ticking!

It appears, per the October 2005 OIBC meeting minutes, the appeal heard by the above-cited appellate body was premised on the "opinion" that the appeal was on state constitutional grounds, e.g. PASH(?). But, if so, then DLNR could have/should have had the appeal processed through the state court system --- not through an administrative appellate body which, in practice, had heretofore adjudicated only appealed Island Burial Council decisions involving "in situ"/"relocate" situations.

Proof of the pudding? It 's my understanding legislation was drafted/proposed, not necessarily introduced, which would enable lineal descendant recognitions to be appealed to and processed by this DLNR-referenced appellate board. Further, subject to correction, it's my understanding another legislative proposal would delete Island Burial Council authority as to its authorized lineal recognition/non-recognition prerogative --- so that the OIBC would be simply a rubber stamp for what DLNR determined in this area.

Frankly, when things like this occur, it is possible to suspect that some "quid pro quo" might have been agreed to; and, this appeal (including how it was and has been handled) was part of it. However, I don't know this "for sure" or "for to be true". But, borrowing from General Patton, this was on my mind.

I also note, at/during the proceedings I attended, that the State staff (SHPD personnel, principally, the History& Culture Branch/Burial Sites Program) was not above the case. Specific staff were furnishing input directly and only to the plaintiff's attorney.

Again, I ask "Who and How is the OIBC represented and protected and supported by the staff?"--- during these proceedings; equally pivotal, henceforth? Is it only when it suits DLNR?

In practically every public commission, non-profit agency, and corporation with which I am familiar, (usually because I served on it) when a policy body decides a matter, the staff supports that decision. They do not have the luxury and/or the latitude to compromise the decision and the decision-making body. When staff disagrees, they have the option of leaving!

Of course, in this instance, the perspective may be influenced by a "Golden Rule" prospectus. That is, whoever has the gold rules!

The fact here is the presumed staff support for and toward the OIBC and its decision just did not happen. Most importantly, to date, there has not been a clear, concise rationale communicated in this regard --- only circuitous chatter.

Further, on reflection, I wrote Mr. Peter Young not simply as an OIBC member. I wrote him as OIBC Chair. Moreover, I sought his response pertinent to and, in retrospect, clearly pivotal to the Oahu Island Burial Council, specifically its standing.

Subject to correction, the pertinent provisions of the Hawaii Revised Statutes, ,i.e., Chapter 6E, enables the function(s), mission, purpose of the Island Burial Councils, including the Oahu Island Burial Council. Presumably, the applicable Hawaii Administrative Rules provide the appropriate elaboration of the law. In turn, therefore, I interpret it also that we, the Oahu Island Burial Council, are not subservient to DLNR. We are not a contrivance established to provide a citizen panel "imprimatur" to what DLNR deems appropriate for the OIBC kuleana. Most importantly, the Oahu Island Burial Council has coequal status with DLNR; that for administrative support purposes, the Island Burial Councils, which includes OIBC, were legislatively placed within DLNR. The logic of the Legislature, in this matter, is quite clear.

It is equally clear the enacted legislation regarding the five (5) Island Burial Councils does not relegate them as subservient to, vertically inferior to, or a patronage haven of the Hawaii State Department of Land & Natural Resources or any of its Divisions and subunits. Therefore, the treatment of and related behavior toward the Oahu Island Burial Council in this recent situation insults. It reflects a lack organizational courtesy as well as questions, for me, whether or not the manners absent stems from amnesia, commission or "just without".

The deed insults all who serve, have served and the oath sworn!

Remediation depends on DLNR and the strength of OIBC to trust the sincerity of DLNR. A good starting point could be what DLNR does to fully account and work with OIBC in bringing closure to the present Kaleikini/Keanaaina descendent appeal as well as building up a better interface based on candor, honesty, trust and respect. (For me, the truth of the relationship will be revealed, in due course, based on whether or not the lyrics of the "mele" matches the hula motions; and, whether or not the hula motions convey both the literal and the "kaona".)

I have purposefully noted the foregoing appellate case. I also here note the seeming reluctance of Administrations to really develop, in concert with OIBC and our fellow Burial Councils, a real PPBS for SHPD, in particular, the BSP; likewise, no real honest effort to provide genuine stability via core staffing by regular classified civil service positions and incumbents. I also reference when OHA furnished funding and no real effort seemed expended to replenish with other dollars --- until OHA withdrew its money. There is the non-inclusion of legislation for OIBC in the DLNR package starting before Mr. Young's appointment.

These have been cited to underscore the question whether or not DLNR is more desirous of controlling rather than supporting the empowerment of the enabled OIBC to do its job well?

Accordingly, if this continues, I respectfully recommend the OIBC seek corrective relief by legislative intervention --- with due consideration given to enabling an independently funded and staffed agency to fully support the work of the Island Burial Councils. (Moreover, each Island Burial Council reflects their respective constituents and aina. Perhaps the remediation starts with a responsive DLNR in this regard, eh?)

[POINT] The Oahu Island Burial Cours must never be relegated to second class steerage in the serving of its public purpose.

Before closing, I wish to raise a related matter to lineal and cultural descendant recognition.

The Kaleikini/Keanaaina case was an appeal of the OIBC determination. In it, regardless of the contending postures, the presumption, I believe, throughout, was that all sides strived to provide their very best --- in terms of information, geneology, family history, documentation etc.

However, early on, perhaps in 2001 -2002, there were conversations, mainly one-on-one, about the recognition process. Bluntly put, the question posed and issue raised was "what if the seeker of recognition is a fraud? That is, what if he or she submits fraudulent data and/or documentation, on purpose, to achieve recognition? What kind of deterrence could OIBC utilize in the application? in the review? What is the recourse to correct when discovered?



accomplishments to inspire, guide us In trying times, we must reflect on shining

By La France Kapaka-Arboleda

Editor's note: La France Kapaka-Arboleda to the current OHA Community Resource to the current OHA Community Resource Coordinator for Rama's INT'than Island been a member of the Rama's INT'than Island barial Council since its incuption and a Burial Council since its incuption and a

the creation of the Island Burial reached. Foremost, on my mind, is Councils. I pay humble tribute to battle front of Honokahua both past all those courageous warriors at the logree of accomplishments we have the rallying call for change. A call and present. Their actions became that allowed for a working process over in determining protocol and that has proven itself many times sition of our Iwi Kupuns. responsibility in the care and dispomany aspects, these individuals braved the challenges, and not with-.... main or discord, but with clear uring these trying times as Native Hawaiians, reflection must be given to the

knowledge of accepting the kulcana knowledge of accepting the kulcana (responsibility) of those ancestors (responsibility) of those ancestors (responsibility) of those ancestors who passed this earthly existence, who passed the not been optimum and process has not been optimum and process has not been optimum to work accountable, they continue to work accountable, they continue to direct sions with notification of direct sions with notification

continue to the continue to the passage and implementation. The passage and implementation of Hawai'i's burial law proves of Hawai'i's burial law proves beyond a doubt that as a people we beyond a doubt that a people we have a people without sions and assume kuleans without discord.

It has been my privilege to be It has been my privilege to be reared by grandparents in the tradireamed hanai system. Unknown to tional hanai system. Unknown to tional hanai system. Unknown to tional hanai system. Unknown the as a child, nuriured within the assume the awesome tion began to assume

genealogical family history and areas of kanu of our chana. Direct instructions of the preservation of were routinely transferred. the kino, and preparation of iwi Tutu Wahine used this subject of teaching as a matter of preparation becoming an adult. should she pass on prior to me was the possibility of losing our ue to live in a home built by my home and I not being able to continstand that should she be called Tulu Kune. She made me underteachings of preserving her physical away, I would put into place the body until such time that I became an adult. So awesome was this thought that my daily prayers with her would always request that she Her concern

My Tutu Wahine lived to the age My Tutu Wahine lived to the age of 98 years. Our prayers were of 98 years. Our prayers were answered; she lived to see me to answered; she lived to see me to answered; she lived and also a mother. adulthood, a wife and also a mother. How important her teachings have there to me. It has allowed me the been to me.

Donald B. Cataluna

OHA, 6/200, P.1

Vice Chair, Trustee, Kaua'i and Ni'fhau

When they allow themselves to be found through development or natural causes, the following advice is

WE do not use them for personal

Ì

hidden agendas.

WB do not use them as "power brokers" in deciding merits of pro-

WE must acknowledge them as individuals who were born and from them we

whom we
WB snust continue to distinguish
WB snust connections direct or
genealogical connections direct or
indirect so individual bealing of
indirect so occur within the context

of the process.

WE need to allow for the perpetual knowledge and care for the iwi and area of kanu, thereby leasening the kulcana for our children.

the knicking to the west two need to focus on the next WB need to focus on the next generations' responsibility to the generations' responsibility to the generations' responsibility to the general substitution of those gone by.

May we continue to acknowledge issues that binds and builds us as native people instead of issues that divide us. He Hawai'i Au.

DOCUMENTS (by Topical Reference)

- I. ACKNOWLEDGE & APPRECIATE [p.2 &3]
 - * Public/Private Sector Development
 - 1. MAY 10, 2006: Ku'iwalu re/ Walkiki Boachwalk (excerpts)
 - 2. April 25, 2006: Communications Pacific re/Ward Village Shops
 - * OIBC Members re/ Institutiona Memory & Najau
 - 1. Legislative Testimony
 - a. Senate Confirmations, 4/17/2005, pp.1-5.
 - b. Senate Confirmations, 4/26/2006, pp.2-3.
- II. A.ORGANIZATION INTERFACE [p 4] B. ORGANIZATIONAL CONTINUITY & CONSISTENCY [p.5-6] C. ORGANIZATIONAL OUTREACH [p.6-7] D. ORGANIZATION P.P.B.S. [p.7]
 - [A-D] 1. Legislative Testimony, House re HOR 60 & HCR 200, 3/30/2005
 - 2 a. Letter to OIBC, 5/14/2003 re/ Capacity-Building & Outreach
 - b. Outline Elaborating on Letter to O(BC.
 - [C] 3 a. Communications Pacific, 11/17/2003 re/ Community Outreach (5 segments and/or parts)
 - b. CommPac, 12/2003 re/Summery of Warkiki Memorial Discussion involving recognized descendants (4 segments)
 - 4. Cultural Surveys, Inc. 9/29/20C4 of Request list ... for persons & families previously recognized...as lineal and/or cultural descendants of Waikiki, Oahu
 - 5. Ku'iwalu, 2/28/2005 re/Waikiki Beachwalk (Outrigger Enterprises) {3 segments}
 - [D] 6. P.P.B.S. Forms
- III. FUNDING/ DEVELOPMENT [p.3-9]
 - * Proposal to DLNR Director, August/September 2000
 - * News Article re/DLNR Great personnesses, 7/4/2006, Honolulu Advertiser
- IV. ORGANIZATIONAL STANDING [p.9-1.]
 - 1. Correspondence to DLNR Director, F. Young re/ Appeal of Lineal Recognition a. June 10, 2005 b. October 8, 2005
 - 2. OIBC Minutes, 10/12/05 Meeting [p: .6 & 10 pargrphs 1-3] re/ Appeal of Lineal Recognition
 - 3. Memo to IBC Chairs/ViceCars, 11/2/2005 re/legislative proposal {draft}, 10/3/05, enable appeal of lineal recognition a DENR appellate body; IBC lineal recognition with DLNR recommensation.
 - 4. Attorney General Opinion, 7/10/2005 to Senator Hanabusa re/ lineal recognition & related to burial site.
 - 5. Descendancy Claim Application Forci From DLNR/SHPD
 - 6. OIBC Meeting 8/14/2002, Minutes (executed) re/ Claim application form is optional. Concern expressed re/use for "special treatment".

- I. ACKNOWLEDGE & APPRECIATE
 - PRIVATE / PUBLIC PROJECT DEVELOPMENT
 - 1. May 10, 2006 KU'IWALU
 RE/ BEACH WALK [KELLY ENTERPRISE]
 - 2. APRIL 25, 2006 COMMUNICATIONS PACIFIC
 RE/ WARD VIllage Stops
 - · OIBC MEMBERS RE/INSTITUTIONAL MEMORY and NA'AU
 - #. SENATE CONFIRMATIONS, JESTIMONY 4/17/2005 Pp. 1-5
 - 2. SENATE CONFIRMATIONS, TESTIMONY, 4/26/2006 pp. 1-3 ind.



COMMUNICATIONS PACIFIC

To:

Jeff Dinsmore

Tim Lui-Kwan Matt McDermott

From:

Pua Aiu

Noreen Kam

Subject:

WARD REDEVELOPMENT - APRIL 10 DESCENDANTS' INFORMATIONAL

MEETING RECAP

Date:

April 25, 2006

Copies:

Jennifer Pang

The following is a recap of the descendants' informational meeting on Monday, April 10, 2006:

In attendance representing Ward Centers: Jeff Dinsmore of General Growth Properties; Tim Lui-Kwan of Carlsmith Ball LLP; Matt McDermott of Cultural Surveys Hawai'i; and Pua Aiu and Noreen Kam of Communications Pacific (CommPac).

Representing possible descendants: Mana Fonseca, Paulette Keleikini, Carolyn Norman, Adrian Keohokalole, Dennis Keohokalole, Emalia Keohokalole, Manuel Makahiapo Kuloloio, Andrew Hatchie and David Hanson (guest of Mana Fonseca).

Jeff provided background on General Growth Properties in Hawai'i and discussed where iwi were found on the site of the former Ward Village Shops. He showed maps of the site and trenching areas. Burials were found in two areas. Four burials were found in area B, at the Diamond Head edge of the property and three burials were found in area F, which was under the old Shirokiya. A cultural layer was also found in area F.

Matt gave details about the iwi that were found. The findings are still preliminary. Nine individual burials were discovered and a few seemed to have been affected by past construction. All the burials have been re-covered with dirt until the Burial Council decides on final disposition.

QUESTIONS FROM DESCENDANTS

- 1. How deep were the burials? 2½ feet; 4 to 4½ feet above sea level.
- 2. Were they coffin burials? No.
- 3. Do you plan to develop around them? General Growth will be meeting with the Burial Council and follow its recommendations. They have the ability to reinter on site.
- 4. How far did you extend the trench? They stripped the area around the iwi for about 4.5 feet.
- 5. Are they full sets? Not known because they didn't want to expose them, so the iwi were not fully excavated.
- 6. What is the estimated dating of the find? The cultural layer in section F (under the old Shirokiya) is dated to the late pre-contact period. All of the burials in area F are related to the cultural layer, so presumably they date to the late pre-contact period as well. The four burials in area B seem to be older because of their location below the natural sand horizon, but it would be impossible to confirm without an analysis.
- 7. Could the remains have been transferred from somewhere else? No, the burials in area F are part of the cultural layer, and those in area B seem to be undisturbed.
- 8. What is the next step? An informational presentation to the Burial Council on April 12.
- 9. How did you get the list of descendants? We used the Wal-Mart and Waikīkī lists.
- 10. Are there any physical buffers? There are wooden fences around the burial find areas.
- 11. What are the Ward Estate's comments on the project? Ward sold the property to General Growth in 2002 so it is no longer involved.
- 12. Can descendants go there? Yes, with at least one-day's notice. Contact Jeff Dinsmore.
- 13. When will the notices be published? In May.
- 14. Why call in people who may not have a connection to the area? This was just an informational meeting.
- 15. Was SHPD notified? Yes.

There was a heated discussion among the attendees regarding the appropriateness of holding meetings with potential descendants before anyone has been recognized. However, this was an informational meeting to ensure that potential descendants are informed of the burials. SHPD will have to recognize descendants.

The next descendants meeting will be held on May 8. If you have any questions or corrections to the discussion items, please contact Pua Aiu at 543-3516.



Public Notice NOTICE TO IN-TERESTED PARTIES IS HEREBY GIVEN that unmarked burial sites containing the human skeletal remains of what are believed to be eleven individuals were discovered by Cultural Surveys Hawai'i, Inc., during archaeological inventory survey excavations related to the development of the approximately 5-acre Ward Village Shops project area. The project area comprises TMK: [1] 2-3-5: 013 -017, 022, & 023, which are bounded by Kamake'e, Queen, and Auahi Streets, in the ahupua'a of Honolulu, Kona District, Island of O'ahu. The project proponent is General Growth Properties, Inc., contact: Jeffrey Dinsmore, 1240 Ala Moana Blvd, Suite 601, Honolulu, HI 96814, Tel. (808) 591-8411.

As yet, no State Inventory of Historic Properties numbers have been assigned for these burial deposits. The makai portion of the project area was formerly a portion of Land Commission Award (LCA) 387, known by the place name Kukuluaco, and awarded to the American Board of Commissioners for Foreign Missions. The mauka portion of the project area was formerty a portion of Grant 3194, known by place name "Kolawalu" and awarded to Kalae and Kalaua. Grant 3194 was a traditional Hawaiian fishpond with adjacent house sites. There are no kuleana claims within the project area. Kuleana claims in the project area vicinity include LCA 10463:1 and 2 to Napela, LCA 1903 to Lolopi, and LCA 3169:1 to Koalele.

Following the pro-cedures of Hawai'i Revised Statutes (HRS) Chapter 6E-43, and Hawai i Administrative Rules (HAR) Chapter 13-300, the remains were determined to be over 50 years old and likely Native Hawaiian. The project proponent would prefer to relocate the human remains to another location either within or immediately adjacent to the project area; however, the decision to preserve in place [HONOLULUADVERTISER.COM]

or relocate these previ- treatment of the unously identified human remains shall be made by the O'ahu Island Burial Council in consultation with any identified lineal and/or cultural descendants, per the requirements of HAR Chapter 13-300-33. The remains' proper treatment shall occur in accordance with HAR Chapter 13-300-38.
The State Historic

Preservation Division is requesting persons hav-ing any knowledge of the identity or history of these human skeletal remains to immediately contact Ms. Pi'ilani Chang, at the State Historic Preservation Division/Department of Land and Natural Resources (SHPD/DLNR), located at 555 Kakuhihewa Building, 601 Kamokila Boulevard, Kapolei, Hawai'i 96707 Tel. (808) 692-8015; Fax (808) 692-8020] to present information regarding appropriate

marked human remains. All interested parties should respond within thirty days of this notice and provide information to SHPD/DLNR adequately demonstrating lineal descent from these specific burials or cultural descent from ancestors buried in the vicinity of this project. (Hon. Adv.: Apr. 19, 20, 23, 2006) (A-377572)

A. VAN HORN DIAMOND

17 April 2005

Senator Colleen Hanabusa, Chair Senator Clayton Hee, Vice-Chair and Senate Members of the Committee on Judiciary & Hawaiian Affairs The Senate --- XXIII Hawaii State Legislature Regular Session --- 2005 State Capitol --- Conference Room 407 Honolulu, Hawaii 96813

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SUBJECT: Testimony re/ Consideration and Confirmation Hearing for Gubernatorial Nominees to the Hawaii, Kauai, Maui, Oahu Island Burial Councils.

Honorable Senators Hanabusa & Hee, respective Chair & Vice-Chair, Members of the Senate Committee on Judiciary & Hawaiian Affairs:

Aloha Kakou. Mahalo for this opportunity to provide testimony for specific nominees to the aforecited Island Burial Councils. This is especially appreciated since circumstances require myself, spouse, and a niece to be in Southern California for both family and business reasons. Thus, we thank you most sincerely for your patience and understanding in this regard.

At the same time, however, sharing "manao" regarding certain nominees is integrity-driven having served on the Oahu Island Burial Council for some time now as a District Representative as well as its elected Chairperson. Clearly, I'm also trying to both communicate and confirm that much needs to be achieved regarding the implementation of the applicable provisions of Chapter 6E (H.R.S.) and Chapter 13-300 (Hawaii Administrative Rules) --- so to properly respond, with reverence, to the reinterment of Kupuna who no longer cast a shadow; that, hopefully, those whom this testimony shares "manao" about has the caring and competence to substantively contribute to the public mission of the Island Burial Councils. [Presumably, the assigned personnel of the Hawaii State Department of Land & Natural Resources will fully honor and kokua the Island Burial Councils.]

[1] GM 594 --- Ms. Dutchie K. Saffery, Hawaii Island Burial Council Nominee. RECOMMENDATION: Confirm her appointment. Ms. Saffery brings a calm, insightful perspective, I believe, to the matters which come before the Hawaii Island Burial Council. However, the calm demeanor ought not to cause one to presume that she is not tenacious in her seeking "what is", in assessing whether or not what is being stated is fully factual, reflects opinion, is incomplete as to prompt checking for veracity.

Further, she commits the time and energy to distinguish between fact, fiction, speculation, opinion etc. I witnessed this commitment when she attended the NAGPRA

Review Committee Meetings in Washington, DC(9/17 & 9/18 2004) and at the East-West Center, Honolulu (March 2005) as well as the Senate Committee on Indian Affairs regarding the definition of "Native Hawaiian Organization" in December 2004 at the East -West Center, Honolulu, HI. Ms. Saffery also attended the January 2005 Oahu Island Burial Council meeting.

Dutchie Kapu Sazffery is a very capable individual with a solid Hawaiian foundation. When appropriate, she can and will provide poignant, relevant, often pivotal comment. Please permit her to contribute to the work of the Hawaii Island Burial Council. Mahalo!

[2] GM604 --- Charles. A. Erhorn, Oahu Island Burial Council (OIBC). RECOMMENDATION: Please confirm. Mr. Erhorn is a gubernatorial reappointment. Noteworthy is that this is a reappointment to his second stint onto OIBC. His first tour of duty, if you will, pre-dates my initial appointment 2000-2002. Hence, one of his most important contributions to the Council proceedings is that "Chuck" provides institutional memory as to what OIBC is doing and does. Further, Mr. Erhorn does not hesitate to question "development proposals" in such a fashion so as to help us discern issues better. He has demonstrated that he serves on the Oahu Island Burial Council to further its public purposes and/or mission; that being a land owner representative is not license to protect unacceptable developer initiatives. OIBC benefits from his work as a Council member. Please let him continue to educate the Council through and with his participation as an OIBC member. Mahalo!

[3] GM605 --- Alice Greenwood, Oahu Island Burial Council(OIBC). RECOMMENDATION: Please confirm. Ms. Greenwood is an active community person with an on-going interest and concern for the "iwi kupuna", especially those who reveal themselves within the Waianae District. Indicative of this community participation is her involvement in what is called the Lualuale Ahapua'a Council. Her noteworthy involvement in the Rockwall collapse at Waimea, Oahu was my initial awareness as OIBC Chair. She also was an OHA Trustee candidate. She has knowledge and has shown how serious she is about the well-being of "na iwi kupuna" many times. She cares. She can contribute to the progress that OIBC can and should purse in 2005 and beyond---with Senate confirmation.

[4] GM606 ---Analu Josephides, OIBC. Mr. Josephides was sworn in the summer of 2004. His appointment requires confirmation. RECOMMENDATION: Please confirm. He is knowledgeable. He has demonstrated a genuine caring with regard to the work of the Oahu Island Burial Council. He is quite candid and forthright in his querying of staff as well as persons who provide testimony and/or input regarding matters OIBC is considering. Presently, he is involved in helping interested persons, principally Hawaiian individuals, in developing genealogical research skills. He also has participated for his Ohana before the Hawaii Island Burial Council. He is an asset to the deliberations and

discussions of the OIBC regarding issues before it. Please enable him to continue to serve on the Oahu Island Burial Council. He will learn and the OIBC mission can benefit. Mahalo!

[5] GM 608 --- Aaron Mahi, OIBC. Aaron Mahi was sworn in and has served on the OIBC, I believe, since July 2004 --- representing the City & County of Honolulu. However, he resigned his OIBC seat, effective the end of February 2005, because he was succeeded as Royal Hawaiian Band Master. Nonetheless, during his time with OIBC, he served and contributed to our deliberations and interactions as a Council. An interesting aside is the observation that he took his notes of OIBC meetings directly into Hawaiian -- no English, although he conversed throughout in English. RECOMMENDATION: Please confirm---if this is possible. His OIBC remarks often gave us perspectives we sometimes overlooked. Mahalo!

[6] GM 610 ---Jace L. McQuivey, OIBC. Mr. McQuivey is a land owner OIBC representative. He is an interim appointee subject to Senate confirmation. Noteworthy is he has served on the OIBC, like Chuck Ehrhorn, throughout 2004. Accordingly, during this time, he has experienced the ebb and flow of administrative, judicial, and community actions. He is articulate and candid in his exchanges during OIBC proceedings. He votes based on his understanding of what is the issue, the workings of process, the receipt of information as well as the sources of same. He is quite conscientious regarding his attendance and works at making up for time lost due to other commitments, e.g. out-of-state business. Jace thinks and responds to issues with deliberateness guided by his sense of compassion and prudence.

RECOMMENDATION: Please confirm. He is an asset to the balance and calm in the deliberations and decisions of the Oahu Island Burial Council.

Mahalo!

NOTA BENE. Regarding GM 607(Andrew K.T. Keliikoa), GM 609(Mark K. McKeague), GM611(Linda Paik-Matsuura), my knowledge about these individuals is very limited. In fact, some information received is best depicted as "incomplete hearsay". Hence, I feel it inappropriate to proffer comment as to whether they should serve and/or would substantively contribute OIBC proceedings and determinations.

Regarding GM 603(Clarence DeLude), he served on the Oahu Island Burial Council starting in 2000. He has been nominated by Governor Lingle subject to Senate Confirmation. He is Ohana with the organization "Koa Mana" which has participated in burial matters principally in the Waianae District, Oahu.

FOR RECORD PURPOSES, I note the following inappropriate pattern of behavior in the discourtesy manifested toward Mr. Tom Shirai, OIBC –Waialua District Representative. (N.B. This has nothing to do with Ms. Linda Paik-Matsuura at all! She seemingly just happens to be the successor appointee.) FACT#1: Mr. Shirai has served as a carryover since 2004. I believe he was never told that he should not expect

to be reappointed. Rather, there was no conversation whatsoever between himself and persons responsible for OIBC appointments --- at DLNR and the Governor's Office. FACT #2: He learned third hand about him being replaced. He then contacted the Governor's Office and was finally informed that he was being succeeded. FACT #3: For more than 6 months, Mr. Shirai had been asking for a parking pass to attend OIBC meetings --- instead of risking parking ticket violations. He had to get to the parking meter before it lapsed without losing information from the OIBC meeting which was happening. FACT: #4: The 2004 Legislative Audit reported an OIBC member had offered himself as a consultant to a landowner intending to come before the OIBC. But, what was not reported in the Audit findings as well as the DLNR response was the fact that the OIBC member (Tom Shirai), when apprised of the conflict of interest, promptly apprised the landowner of why it was inappropriate for him to be a consultant for the landowner. Tom Shirai immediately withdrew from this circumstance. Yet, the record was not and remains uncorrected. POINT? Mr. Shirai, warts-n-all, is still a citizen volunteer serving on a public commission, i.e. the Oahu Island Burial Council --- without remuneration. NO CITIZEN VOLUNTEER DESERVES TO EXPERIENCE SUCH HIGH DISREGARD AND DISCOURTESY!

DLNR Management, starting with Nathan Napoka and Melani Chinen, in particular, and, Governor Lingle, for her assigned staff in this area, it behooves these persons to redress this inappropriate behavior---with more than ordinary words of regret. There's a saying I used to use. It seems appropo here to-wit:" I listen to the words, but, I'm looking at the feet!"

For me, this situation is not a political choice exercise. It is a matter of whether or not persons participating in this political process, at the core, are decent, loving, respectful human beings who act accordingly --- or not!

[7] GM 613 ---D. LaFrance Kapaka-Arboleda, Kauai Island Burial Council. RECOMMENDATION: With great respect and sincerity, please confirm La France. She is the institutional memory of that Island Burial Council. She has the familial knowledge acquired from her Kupuna regarding the care for "na iwi kupuna". She is courageous, resolute and readily focused to do what is most appropriate those who no longer cast a shadow and who revealed themselves so that the living might "malama them and help to make matters "pono" for all. La France has always been open, forthright, and practices aloha in her dealings with us all. I know our periodice teleconversations as well as some very limited meetings of the Burial Council Chairs have been beneficial because of her "manao". I recommend reading an OHA newsletter article she wrote in 2003. It succinctly communicates why she is presently pivotal to the workings of the Kauai Island Burial Council and contributes to her fellow Chair's growth as well thru our conversations. Mahalo!

[8] GM 620 --- Dana M. Naone Hall, Maui/Lanai Island Burial Council. RECOMMENDATION: please confirm Ms. Hall. Her participation in the care, custody and reinterment of our Hawaiian ancestors is well-recorded and reflects a knowledge, a

commitment and caring for our departed kupuna —to insure that reverence and what is right prevails! My awareness of this special person results from our sitting on an appellate body on a landowner's appeal of an Hawaii Island Burial Council decision. Throughout the proceedings, Ms. Hall's remarks were crisp, on-target, clear, and poignantly logical throughout. It could cause discomfort when it had to. It could produce understanding with a Socratic style of querying witnesses. Above all, her questions, observations and straight-on remarks consistently assisted, moreover advanced, the deliberations of the appellate body. The result is the appellate produced a unanimous decision in the case before it.

Both Dana and La France are excellent communicators. Their remarks reflect, I believe, an inner balance and an uncommon perspicacity with regard to the work of the Island Burial Councils. Equally important, their continued participation in the work of the Island Burial Councils adds because they each possess "institutional awareness and memory." Mahalo!

CONCLUSION

First, thank you for your great patience and resolve in responding to the 41 Gubernatorial nominees to Island Burial Councils sent you for consideration and confirmation purposes. Given the amount of time remaining in this 2005 Legislative Session, this Senate Committee response warrants appliance and much thanks.

Second, I am testifying as a private citizen who, currently, is the elected Chairperson of the Oahu Island Burial Council as well as one of two Council representatives for its Kona District(Maunalalua Bay to Moanalua Valley—mountain to the sea, i.e., Mauka/Makai. Most importantly, my remarks in testimony reflect my participation in the work of Island Burial Councils, mainly and in particular, as OIBC Chairperson. (I did not inform the Council members of my testifying before and what I planned to say. Moreover, they did not vote in this regard. Hence, I choose to underscore that the absence of an OIBC meeting and vote in this matter underscores why, in this instance, I include this disclaimer regarding speaking for the Oahu Island Burial Council.

E-mail: senhanabusa @ capital. havaii. gov

A. VAN HORN DIAMOND

April 24, 2006

Honorable Senator Colleen Hanabusa, Chairperson& Members Committee on the Judiciary and Hawaiian Affairs State Senate --- Hawaii State Legislature 2006 Legislative Session State Capitol Honolulu, Hawaii 96813

SUBJECT: Hearing to consider the confirmation of Gubernatorial Nominees
Senate Committee on the Judiciary & Hawaiian Affairs
0900 A.M. --- 24 April 2006

Re/ Supportive Testimony to confirm:

(1) Mr. Thomas K. Sing, Correctional Industries Advisory Committee --- Governor Message #446

(2) Ms. T. Kehaulani Kruse, Oahu Island Burial Council [OIBC] --- Governor Message # 469

(3) Ms. Ululani K. Sherlock, Hawaii Island Burial Council [HIBC] --- Governor Message #503

Right Honorable Senator Hanabusa, Chairperson
Honorable Senators Hee, Vice-Chairperson and Committee Members:

Aloha to you. Mahalo for this opportunity to talk with you on the above-cited subject, in particular, the confirmation of the Gubernatorial Nominees of GM Nos.446,469, and 503, respectively.

With respect and sincerity, for identification, information, introduction and record purposes, my name is A.Van Horn Diamond. I am providing this testimony as a private citizen. However, with regard to Kehaulani Kruse, my testimony reflects our serving together on the Oahu Island Burial Council, currently, as Kona District Representatives; and, its elected Chairperson (2001-2005). But, it is important to note that this testimony is not a formal OIBC position since the OIBC was not apprised of this Gubernatorial Nomination; likewise, to my knowledge, the nomination/confirmation hearing and vote for Kehaulani Abad. Of course, our Oahu Island Burial Council Meeting is normally the second Wednesday of each calendar month, i.e. April 12, 2006.[I do not recollect the Council being formally apprised of these two(2) nominations being transmitted to this Senate Committee for "advise and consent" purposes.] My point here is to underscore that timely notification might have educed supportive testimony for both OIBC members' confirmation. Further, this presumes due notice would emanate from the Office of the Governor and/or the Historic Preservation Division, Department of Land & Natural Resources.

Whereas, testimony for Ms. Ululani Sherlock reflects an awareness from my service on the Oahu Island Burial Council and my participation in the Hale O Na Alii O Hawaii Nei Ahahui Po, in particular, as the Iku Kuauhau (1999-2005) for the Honolulu Chapter with an especial assignment which, in effect, required my developing an awareness of both Chapter 6E (Hawaii Revised Statutes) regarding the reinterment of Na Iwi Kupuna as well as the repatriation of Ancient Hawaiian Ancestral Remains and Artifacts pursuant to NAGPRA --- so to keep the Honolulu Halau and its Iku Hai apprised; also, when directed, to provide applicable public testimony and/or commentary. Mrs, Sherlock serves as the statewide Vice-President for Hale O Na Alii O Hawaii Nei Ahahui Po; and, subject to correction, was the Iku Hai (President) of this royal society's Hilo Chapter.

Re/GM # 446 --- Thomas K .Sing, Correctional Industries Advisory Committee.

My support for Mr. Sing's confirmation results from my awareness of his competence, resolve, and interest in developing employment opportunities, especially in the Printing Trades and/or occupations. [At the time, i.e. 1974 through 1979, Mr. Sing was a member of the Executive Board, Hawaii State Federation of Labor, AFL-CIO --- an elective office. While I served Hawaii's trade union movement as one of this AFL-CIO State Federation's principal officers, i.e. Executive Secretary-Treasurer. Further, Mr. Sing represented the local union membership of the Graphic Arts International Union. In this capacity, he was, for his GAUI members, part of the Printing Trades Council's collectively bargained contract with the Honolulu Advertiser and Honolulu Star-Bulletin, respectively.]

During this period, I recollect Mr. Sing expressed interest in the rehabilitation potential the Correctional Industries could realize and thereby help to reduce recidivism.

Admittedly, I've lost track of his interest in this regard. However, I sense this is a reappointment of Mr. Sing to this Advisory Committee. Moreover, his appointment to this advisory committee should further enhance the correctional industries program. He brings the kind of "hands-on caliber knowledge" to the skills training furnished the participant prison population; and, possible employment when they leave prison.

Above all, I believe his caring will translate into the kind of resolve where desired outcomes are achieveable.

Re/GM#469 --- T. Kehaulani Kruse, Oahu Island Burial Council(OIBC)

My support for the confirmagtion of Ms. Kruse is based on the deeply held conviction that she brings much to the Oahu Island Burial Council --- so to enhance the capacity of the OIBC to serve its public purpose. She has the kind of care, concern, competence which OIBC work demands.

Her background affirms (1) her understanding of the Hawaiian Community (2) her institutional memory and/or awareness of DLNR's Burial Sites Program functions with the Historic Preservation Division as well as the work of the OIBC (3) Kehau's genealogical and/or familial relations provides her a depth to her Hawaiian awareness

and foundation starting here in Hawaii and extending, for example, to Tahiti. (4) Kehau has a spiritual grasp of Hawaiian traditions, values, and ways as a result of her learning from (Kahuna) John Keola Lake. She is now an Haumana.

Briefly, the foregoing reflects a personal awareness of Kehaulani Kruse resulting from my serving as Alu Like's Deputy Director(Chief Operations Officer, 1982-1986) wherein she was part of the Planning Department(circa 1979 – 1984). While serving as OIBC Co-Kona District Representative and its Chairperson, I learned that Ms. Kruse had worked in a staff capacity with the Burial Sites Program when Edw. Ayau was its administrator; and, she has demonstrated the kind of caliber commitment to the care, custody and reinterment of our Kupuna with reverence --- in the actual doing! Moreover, Kehau also provided pivotal HRO leadership in the development of an aspiring Hawaiian environ and practices in the servicing of hotel guest within the Kelly Hotels as well as in the interface between and among Kelly properties personnel.

Finally, all of the above enables me to fully endorse her appointment and confirmation. But, there is another aspect which warrants inclusion. She can articulate the spiritual values applicable and appropriate to an OIBC circumstance. That is, her manao is relevant. Furthermore, her "naao" is a pivotal factor in considering her on the Council.

Recently, there's been efforts to try to standardize what constitutes the persona needed for Island Burial Council work. However, the terminology is highly westernized as to form and content. Yet, the real content is perhaps a compendium of these westernized words with the added dimension summarized in the term "Naao". This is because there are moments when the western logic does not satisfy what is deeply sensed from the Hawaiian foundation one has. For example, there can be an assertion that the submitted geneology doesn't match. Yet, it's also possible the formal geneology is perhaps secondary to a lesser known geneology known to select Ohana members.

This facet of T. Kehaulani Kruse underscores her importance to the work of the Oahu Island Burial Council. Please confirm her!

Re/ GM#503 --- Ms. Ululani K. Sherlock, Hawaii Island Burial Council (HIBC)

My awareness of Ms. Sherlock stems from her participation in the proceedings of the Hawaii Island Burial Council. When present and participating, the record shows she is her own person; and, she is not moved easily by the pressure of participant bombast. She thinks for herself and acts accordingly. It is a testament to the kind of strength and insight needed in the work of an Island Burial Council.

I am aware of her foundation as an Hawaiian and her commitment to our people by virtue of her longevity as a member of the Hale O Na Alii O Hawaii Nei Ahahui Po as well as her providing leadership within and to the Hilo Chapter. Noteworthy is this royal society with ties back to Hale Naua, and, therefore, King Kalakaua, has specific rituals and protocols for the interment of its members. As iterated earlier, she is presently serving in a leadership capacity at the state level of this royal society. In said capacity, she acquires a perspective and/or awareness which can benefit HIBC.

Please accept this apology for the lateness of this testimony. Circumstances recently have been a bit difficult.

Thank you most sincerely for receiving and considering this testimony. Hopefully, it will enable favorable consideration and result in Senate Confirmation for the three(3) person cited above.

O Kou Ahonui Mai Nei I'Au.

Respectfully submitted,

A. Van Horn Diamond
Private Citizen with awareness from being
a Current Oahu Island Burial Council Member &
Iku Kuauhau Naha, Hale O Na Alii O Hawaii Nei, Ahahui Po (Honolulu Chapter)

A.	ORGANIZATIONAL INTERFACE
B.	ORGANIZATIONAL CONTINUITY & CONSISTENCY
، گ	ORGANIZATIONAL OUTREACH
\mathcal{O}	COCANIZATIONAL DPRC

[A-D] 1. LEGISLATURE, TESTIMONY, 3 30 2005, STATE HOUSE, RE/HCR 60 & HCR 200.

[A-D] 2. a LETTRE TO OIBC, 5/14/2005 b. OUTLINE DEPICTING OIBC Building & Outread

[C] 3 a CommPac, 11/17/06 RE/Community OKTRETERT

b. CommPac, 12/20/2003 RE/SUMMARY OF WAKKI MEMORIAL

DISCUSSION INVOlving RECOGNIZED DESCENDANTS

4. Cultural Surveys Ive, 9/29/2004 RE/ REQUEST FOR INST of persons & family recognized as LINEAL and/or cultural descendants of Walkiki,

5. Ku'IWALY, 2/28/2005 RE/Warkiki Beachwalk

[D] G. P.P.B. S FORMS

Testimony

A. Van Horn Diamond, Private Citizen

Hearing
House Committee on Water, Land and Ocean Resources
XXIIIrd Hawaii State Legislature – 2005 Legislative Session
State House of Representatives
State Capitol – Conference Room 229
Wednesday, 30 March 2005 – 10:00 a.m.
Representative Ezra Kanoho, Chairperson
Representative Brian Schatz, Vice-Chairperson

Subject: HCR 200 and HCR 60

Honorable Chairperson, Representative Kanoho, Vice-Chairperson, Representative Schatz, and members of this committee on Water, Land, and Ocean Resources.

Aloha Kakou. Mahalo for this chance to talk with you regarding authorizing a comprehensive legislative auditor's audit of the Hawaii State Department of Land and Natural Resources.

N.B. I am testifying today as a private citizen whose awareness, albeit limited, has been developed from experiences learned as an Oahu Island Burial Council member since July 2001 (Kona District representative). Presently, I also serve as the council's elected chairperson.

Further, the Oahu Island Burial Council has not considered and/or voted on HCR 200 and HCR 60, specifically. This is due to 1) the council did not have its regular monthly meeting in March 2005. 2) the council has not been apprised of legislative matters which might be pertinent to its work by DLNR's Historic Preservation Division or any of its subdivision and/or sub-units e.g. Burial Sites Program/History and Culture Branch.

Ergo, the following testimony reflects only the person testifying.

First, I support the conducting of a comprehensive audit, by the legislative auditor, on the Hawaii State Department of Land and Natural Resources, to include several divisions. My preference here includes assessing the extent (quantity wise and qualitatively) of corrective responses to the legislative audits of Historic Preservation Division in 2002 and 2004.

It is hoped however, elements of HCR 200 and HCR60 can be combined – perhaps using HCR 60 as the vehicle for passage. For example, HCR 200 delineated six(6) outcomes as: plans and programs; stewardship (performance indicators); financial plans; policies, procedures, management/personnel guidelines/enforcement to align performance with plans and budget etc.

These, together with HCR 60's five(5) items cited [review of mission/operation; personnel recruitment, hiring, employment, salary policies; examine/inspect all funding sources/amounts received/how expended ...] should assist the legislature, the administration and responsible citizen stakeholders (individual/corporate) in learning the current situation, the prospectus for constructive corrective measures.

Further, I recommend consideration of the following factors to be looked at with DLNR:

- 1) There is a need to secure a continuum wherein "institutional memory" is provided for and supported to benefit the commonweal,
 - a. An important element is to establish a cadre of professional, quasi-professional, clerical career-oriented positions with regular civil service status. Presently, the Historic Preservation Division operates with a manpower count dominated by civil service exempt positions thereby keeping personnel subject to organizational insinuations of manifest job insecurity which impacts job performance.

Further, this approach, over time, makes employees vulnerable to "spoils system type" influences too. Another facet is the gravitation of personnel to fall prey to being a victim of insufficient funds, overwork, understaffing as the justification for inertia. Another aspect is programs becoming susceptible to specific interests groups seeking to pressure "self-interest outcomes"; Also, enabling specific personnel interests to be in conflict e.g. burial program staff versus archaeology staff – undermines the important interface needed to assist Burial Council determinations.

- 2) There's need for the courtesy of consultation and conferral between the Island Burial Council and the department on an on-going regular basis. There's the need to establish also what Island Burial Councils can expect in terms of departmental support, especially with regard to Council authority to act despite departmental advice to the contrary.
- 3) Processes between DOCARE and Historic Preservation to be looked at, to produce a finding; to implement compliance-related penalties for demonstrated violation this interface needs to be assessed as to timeliness, efficacy, follow through and cooperation.
- 4) The Historic Preservation Division entoto, in particular, the Burial Sites Program, needs to initiate a strategic plan wherein its plans, program-related activities are clearly cited and delineated; timelined as to start.completion; criteria to determine acceptable performance as well as completion; establish allocation of staff and staff time in relation to operational policies processes. (This presumes on-going monitoring and evaluation personnel time/motion; assignment of sufficient funding.)

[N.B. Presumably, incumbent SHPD Administrator Chinen has started this undertaking. It's my understanding she reported this to a Senate Committee in response to a question from Senator Lorraine Inouye. I believe she noted working on the time/motion aspect of staff work being performed.]

Second, please consider looking at the state plans formulated by the Governor Ariyoshi Administration. It should provide a backdrop of what was then, what was prospectively initiated. Said backdrop then might assist in determining:

- 1) What's been accomplished and completed
- 2) What's been done to move forward since then
- 3) What not been done to move forward since then
- 4) What is current status (comparison/contrast)
 - a. Ariyoshi vis-à-vis 2000; 2002 2005
 - b. Historic Preservation Division similarly appraised to see how and what 2002 and 2004 findings manifests with the longer view.

Finally, there is a need, for example, to include the five (5) citizen volunteer panels called Island Burial Councils in all discussions dealing with activities related to their Kuleana by Island Council members, individually and collectively. (To-date, it has not yet been continuous/regularized – or often.)

Hearsay has been received so that we understand our collective/individual manao has not been asked or perhaps considered relative to:

- 1) the interview and appraisal of SHPD Administrator candidates and/or selection.
- 2) Concerns discussed with "Friends of Island Burial Councils", Native Hawaiian Legal Coporations, OHA even, at minimum, the courtesy of being informed such a consultation and/or meeting is happening.
- 3) Whether Oahu Island Burial Council, collectively/individually, had manao regarding elements of 2004 audit findings pertinent to it. This includes what was we assume an inadvertent oversight wherein no Oahu Island Burial Council member, including this chair, was informed of a public meeting 2/15/05, State Capitol Auditorium, regarding district representation on Island Burial Councils in response to Audit 2004. Yet, the Oahu Island Burial Council February meeting was held on 2/9/05 Wednesday about 6 days prior to the Oahu meeting.
- 4) This simply is provided to reflect a concern that this Island Burial Council may be deemed unimportant to the direction of SHPD and its Burial Sites Program; or, perhaps not readily persuaded to comply with where SHPD believes the direction to be. It may also insinuate the intent to sundown these panels.
- The Oahu Island Burial Council still awaits a briefing by SHPD regarding the legislative audit 2004.

Lastly, it is recommended the legislature hold public hearings wherein it may be briefed by the legislative auditor as to its findings of the proposed audit coming from HCR 60 and/or HCR 200.

Until then, however, it might be beneficial for such a hearing for the audits of SHPD of 2002 and 2004 with DLNR participating as well as perhaps the Island Burial Councils.

Thank you for permitting this testimony and its contents to be considered in your decision-making.

With much aloha and respect to each of you.

A. VAN HORN DIAMOND

Members, Oahu Island Burial Council c/o Burial Sites Program Historic Preservation Division Hawaii State Department of Land & Natural Resources Honolulu, Hawaii

Dear Oahu Island Burial Council Members:

First, thank you sincerely for genuinely caring about the work we do together as the Oahu Island Burial Council (OIBC). Clearly, you affirm your concern and dedication through your participation in Council meeting discussions, deliberations and decisions. Further, I believe the following undergirds what we do. That is, we strive to keep the needs of the human condition of this temporal order balanced with the protection of "Na lwi Kupuna" so to insure their reinterment with reverence — when disturbed. This is my picture of our work together.

The foregoing prompts the following commentary and recommendations:

[1] The Oahu Island Burial Council needs to ascertain and assess the extent to which Departmental support exists and is provided. This includes data presumably recorded and available from Departmental files of the Historic Preservation Division, especially the Burial Sites Program.

[2] The Oahu Island Burial Council needs to learn how it is faring/performing per input from the several "stakeholder" publics, whom we work with to do our job — to improve what OIBC is doing.

[3] This Council has considerable knowledge, experience and talent within its ranks of "'elele" {representatives}. Hence, to further develop the OIBC productivity/proficiency, we need to capacity-build utilizing the skills of the OIBC members.

[4] a. The success of OIBC and the Burial Sites Program regarding the reburial of "na iwi kupuna" rests on the efficacy of their interaction with its resultant impact on execution. b. OIBC and the Burial Sites Program needs to jointly chart the future; likewise, program the direction. Presently, this person sees progress as pretty much marginal — for cause.

Hopefully, the following recommendations gain your approval.

** Establish a Sub-Committees Organization and Structure which capacity-builds the Oahu Island Burial Council so to better respond to what the Burial Sites Program/ Historic Preservation Division (Departmental support) can do, may have available and/or can be accessed.

** Request information pertinent to developing the fountainhead from which the direction and future is determined

** Establish an OIBC Task Force to help our Council learn our strengths and weaknesses of OIBC and the Burial Sites Program. (During the 2003 Legislative Session, SCR 180 sought to learn from the stakeholder publics how the Island Burial Councils are performing.

Lastly, with great respect and sincerity, it's herein recommended this honorable body favorably consider and act on the recommendations. N.B. During "Opening Remarks", these recommendations will be described, hopefully, with clarity. Moreover, if you are amenable and it is legally possible, it would be a boon to have these recommendations approved by the Council.

Mahalo for your favorable consideration and concurrence. Throughout, the intent and desire is to move forward --- as best we can!

Respectfully and sincerely yours,

A .Van Horn Diamond, OIBC Chairperson

Aloha Kakou

Introductions

Why We're Here

Please Note

OIBC Meeting

Purpose

- Educate
- Inform
- Discuss
- Decide

Educate -	Inform -	• Discuss
Issue	Fact	Provide/Receive
Kuleana	Fiction	Assess/Clarify
Process	Theory	Grasp/Discern
Participate	Opinion	Deliberate

Decide

- Direction
- Disposition

OIBC Meeting

To Participate Requires

- Verbal/Written Testimony
- Permission to Testify
 - 1. Get on Agenda
 - Directly (before meeting)
 - 2. Gain Chair okay at meeting
- Testify on Agenda item

OIBC Meeting

Expectations (Behavior/Etiquette)

- Common Courtesy & Mutual Respect
 - Gain Chair Recognition
 - Address Agenda Item only
 - Remarks to/for OIBC
 - OIBC "Q & A" through Chairman
- Dignity & Politeness

OIBC'S Job

Decide "In Situ" or Relocate

Assist Burial Site

- Identification
- Inventory

Recognize

- Lineal & Cultural Descendants
- Appropriate Hawaiian Organization

Maintain List

Appropriate Hawaiian Organization

Recommends

 Appropriate Management, Treatment, Protection of Hawaiian Burial Sites

Further (OIBC) Chapters 13 – 300 and Chapter 6E

Three Goals O.I.B.C.

Capacity-Build: From Within

Performance Rating: From Public

Decide Direction: From Data

RECOMMENDATIONS

- 1. Establish Subcommittee System
- 2. Establish O.I.B.C. Task Force
- 3. Access Data for O.I.B.C. Direction

Establish OIBC Subcommittees System (OBJ) Capacity-Build OIBC From Within

OIBC Subcommittees-

- 4 OIBC Development Subcommittees
 - Departmental Support
 - Legislative & Governmental Affairs
 - Neighbor Island Burial Councils' Liaison
 - OIBC Policies & Procedures
- 4 OIBC Operations Subcommittees
 - Burial Sites Inventory
 - Confer & Consult (Section 106/NAGPRA...)
 - Recognition
 - Site Visits (adhoc)

Membership: OIBC Members Only

Leadership: Co-chairpersons

Responsibility: Reviews, Evaluates,

Recommends Course of Action to OIBC; May Represent OIBC When Authorized

Establish OIBC Task Force

(OBJ) Find Out From Public "How We're Doing"

Duration: 7/1/2003 – 2/28/2004

Composition:

2 OIBC members

10HA representative

1 DLNR chairman or designate

1 US National Park Service representative

2 OIBC ex officio: chairman and vice-chairman

Kuleana:

- Hold public meetings for public input
- 2. Review available data regarding OIBC et al
- 3. Evaluate and report findings by 1/31/2004

ACCESS DATA: ASSESS OIBC PERFORMANCE

(OBJ) Enable OIBC to Determine & Execute Current/Future Direction, Includes Extent of Departmental Support (Available/Needed)

- 1. OIBC with Department Support, Identify/Access Data
- 2. OIBC Decides Development of Data Thru Subcommittees
- Types of Pertinent Data:

 Personnel (Job Descriptions/Workload)
 Burial Sites Inventory; Recognitions(s)
 Cases (Types/#/Duration; Confer/Consult (106 etc.)
 Legal Opinion(s)/Advice; Budget Administrative Support (Clerical & Technical)

Filename:

OIBCTaskForceReport.doc 07-02-04/08-06-04/08-10-04

<u>DRAFT</u>

OAHU ISLAND BURIAL COUNCIL TASK FORCE REPORT AND RECOMMENDATIONS:

Background to OIBC:

- State Audit in December 2002
- Recommendations re: DLNR and SHPD specifically
- Formation of the OIBC Task Force
 - -members
 - -direction
 - -issues

Major Areas to be Discussed:

- Department (DLNR)
 - -administrative process to deal with violations of laws and regs.
 - -Departmental assistance
- Burial Sites Program specific
 - -need policy and SOP to support staff recommendations
 - -staff recommendation process re: recognition (i.e. Kana'i)
 - -Staff support and resources
 - -i.e. cabinet
 - -Position and function of incumbent (Kai Markell)
 - Data Access
 - -Number of burials
 - -Cases handled monthly
 - -Inventory
 - -Disposition
 - -Development/designation of Intercouncil Liaison (for burial councils)
 - Program Areas based on function
 - -recognition of NHO
 - -burial sites
 - -inventory
 - -database
 - -internal policy issues
 - -burial information forms
 - -genealogical
 - -recognition

- Lineal or cultural descendants recognized to iwi not the land
 - -definitions in rules
 - -geography issue should have been addressed during drafting and review of rules
 - -Nathan and Kai not on same sheet of music
- Oahu Island Burial Council
 - -appointment process for burial councils
 - -how nominated, reviewed and accepted

Long term viability of Burial Council functions

- -i.e. challenges to incumbent lineal descendants (process not in place yet)
- -need policy and SOP to support staff recommendations
- -staff recommendation process re: recognition (i.e. Kana'i)
- -Subcommittees established (sunshine law)



COMMUNICATIONS PACIFIC

To:

Waikīkī Ahupua'a Descendants

From:

Alani Apio

Subject:

DRAFT DOCUMENTS OF PROPOSED CULTURAL CONSULTANT PROGRAM

Date:

November 17, 2003

Aloha nō.

Attached are several documents that have been developed over the past two years regarding a proactive cultural consultant process and program. This process began with the O'ahu Island Burial Council's Task Force on Cultural Monitors in July 2001. From the Task Force's meetings, draft documents were developed that outline a process for proactive consultation with the Hawaiian community and define the roles of cultural consultants, their qualifications, attributes and responsibilities (see attachments 1 and 2).

In the fall of 2001, the Board of Water Supply (BWS) and Communications Pacific (CommPac) engaged the communities of Wai'anae to develop and implement their own cultural consultation program in connection with several BWS projects in the area. The communities agreed that approaching each ahupua'a would be best. Subsequently, the ahupua'a of Honouliuli, Nānākuli, Lualualei, Wai'anae and Mākaha developed their own cultural consultant screening committees, drafted criteria for cultural consultants and presented BWS with their own lists of acceptable cultural consultants. (As an example, attachment 3 shows the Lualualei Ahupua'a Council's qualifications and recommendations.)

Over the past two years, BWS and the ahupua'a councils of the Wai'anae Coast have developed volunteer and paid cultural consultant contracts. Currently, there are four cultural consultants engaged on BWS projects in Wai'anae. Additionally, the ahupua'a councils have provided BWS with proactive cultural reviews of upcoming Wai'anae projects while they are still in the design stage. BWS has taken the reviews under advisement and revised projects appropriately. To date, there have been no cultural finds or impacts on any Wai'anae projects. Pertinent sections of an active BWS cultural consultant contract including a description of work, duties and responsibilities, qualifications and protocols - are included as attachment 4.

We at CommPac look forward to the opportunity to work with you to build a proactive cultural consultation process for the Waikīkī ahupua'a. Please call me at 543-3527 if you have any guestions.

Mahalo.

Attachments

Ka Hoʻokūʻauhau (Cultural Consultant's Component of Development Process)

When a development project is first envisioned, the developer shall contact the proposed *Database/Information Clearinghouse* for preliminary historical, cultural, and/or genealogical information pertinent to the proposed project. It is envisioned that this database will be a joint effort between Hawaiian organizations (i.e., Hawaiian Civic Clubs, the Benevolent Societies, etc.) and the state government. Through this entity, a developer would be able to receive the necessary preliminary cultural and historical information about a proposed site and about which *Cultural Consultant(s)* should be contacted.

A *Cultural Consultant* (see Nā Wehewehe 'Ana) might then be employed to advise on the cultural use and importance of *general* locations so that developers are aware of potential impacts at the earliest possible planning stage—this includes city, state and federal construction projects.

During the *planning* of a development project, e.g., one which has the potential to adversely impact cultural resources, a *Cultural Resource* (see Nā Wehewehe 'Ana) might be employed to advise on the cultural use and importance of *specific* project locations. A *Cultural Liaison and/or Facilitator* (see Nā Wehewehe 'Ana) might also be employed if it is determined that the project is likely to cause significant cultural impact. The *Cultural Liaison/Facilitator* would work with the affected parties to avoid or minimize impact, and if impact does occur, work with the parties to achieve the best compromise solution. The *Planning* stage is often coincident with the preparation of the Environmental Document (Environmental Impact Statement, Environmental Assessment), and National Historic Preservation Act Section consultation requirements.

Ka Hoʻokūʻauhau Cultural Consultant's Component of Development Process Page 2

During the *construction* phase of the project, a *Cultural Monitor* (see Nā Wehewehe 'Ana) might be employed to advise, counsel, or remind the construction workers of proper conduct, and admonish against improper conduct. If unexpected actions occur (e.g., inadvertent discoveries of human remains), the *Cultural Monitor* would be able to advise on the proper cultural protocol to follow. Ideally, during project construction the *Cultural Monitor* should work together with the *Cultural Liaison/Facilitator*, or for smaller projects, may also assume the responsibility of the *Cultural Liaison/Facilitator*.

Nā Wehewehe 'Ana

(Definitions, Descriptions and Protocols for Cultural Consultants)

General Definitions from Webster's College Dictionary

Culture

- The sum total of ways of living built up by a group of human beings and transmitted from one generation to another.
- · The behaviors and beliefs characteristic of a particular social, ethnic, or age group.

Consultant

Person who gives professional or expert advice.

Monitor

- Person who admonishes (cautions, advises, or counsels against something; urges to a duty or reminds of an obligation), especially with reference to conduct (personal behavior, way of acting).
- · Person who serves to remind or give warning.
- Person who oversees or supervises.
- Person who watches closely for purposes of control or surveillance (watching or keeping track of someone or something).

Liaison

 Person who initiates and maintains a contact or connections by communications between organizations or units in order to ensure concerted (contrived or arranged by agreement or planned or devised together) action and cooperation.

<u>Facilitator</u>

- Person who makes (things) easier or less difficult.
- · Person who helps (things move) forward, or assists in the progress of things.

Resource

Person who serves as source of information or expertise.

Protocol

 Customs (more or less permanent way of acting reinforced by tradition and social attitudes) and regulations dealing with diplomatic formality (skilled dealings in accordance with tradition, form and ceremony), precedence, and etiquette.

<u>Definitions for Cultural Consultants</u>

Facilitated and Prepared by
Communications Pacific for OIBC Task Force on Cultural Monitor (8/30/01)

A cultural consultant is a person who can render professional or expert knowledge on topics or subjects having to do with a particular culture.

A **cultural facilitator** or **liaison** assists parties, using communications, through potentially difficult processes, and seeks to ensure concerted, cooperative actions among the parties.

A **cultural monitor** is a cultural consultant who oversees, watches, or keeps track of actions so as to advise, counsel, or remind others of proper conduct, or admonishes against improper conduct.

A **cultural resource** provides site and/or area-specific information and recommendations.

Position Descriptions

Kahu/Kūʻauhau (Cultural Consultant)

- 1. Act as point-of-contact for developers whose projects are either proposed for potentially culturally sensitive areas, or where the developer seeks to create and/or enhance a Hawaiian cultural component. This includes city, state and federal construction projects.
- 2. Advise clients and/or government agencies regarding basic Hawai'i and Hawaiian history, Hawai'i and Hawaiian cultural contexts, and considerations for proposed development/construction in Hawai'i.
- 3. Recommend culturally appropriate approach to project, oriented toward prevention of disturbances to nā iwi kūpuna (ancestral remains) or sacred sites.
- 4. Establish and improve communications with the community by recommending appropriate cultural liaison(s), cultural resources(s), and/or cultural monitor(s) for project.

Potential Requisite Qualifications:

- a. Possess a great depth and breadth of knowledge, both traditional and academic, of Hawai'i's history and cultures.
- b. Possess social abilities that allow for interface with business, government and community representatives.

Cultural Llaison

- 1. Act as point-of-contact for developer/contractor to engage in dialogue with impacted communities.
- 2. Identify appropriate parties, i.e. cultural and lineal descendants, community leaders, business leaders.
- Coordinate and initiate dialogue with cultural/lineal descendants, community/businesses impacted by project.
- 4. Initiate identification of community/business representatives and cultural monitor and coordinate with all involved.
- 5. Coordinate and initiate identification of cultural facilitator, if necessary.
- 6. Work with cultural facilitator to resolve issues that arise from project.

Cultural Facilitator

1. Act as neutral third party to facilitate and mediate conflicts that arise from project. Ideally, facilitator would serve as liaison as well.

Cultural Resource

- 1. Provide traditional and academic knowledge of culture and history of impacted areas/communities.
- 2. Provide recommendations to developers regarding appropriateness of project, potential challenges and potential cultural liaisons.

Potential Requisite Qualifications:

May have any of the following: genealogical ties; acquired knowledge; recognition as a "cultural treasure;" established community credibility and authority.

Kākoʻo/Paʻaioa (Cultural Monitor)

Brief Description:

In development areas which are likely to impact native Hawaiian cultural sites, a cultural monitor can be utilized to provide additional assurances to the Native Hawaiian community that important resources are being properly treated. A cultural monitor acts as an independent observer who is both knowledgeable and sensitive to Hawaiian site management and who has the trust of members of his or her community. They work closely with archaeologists to provide a liaison with the Native Hawaiian community, and they provide an additional safety net when cultural sites are discovered or inadvertently impacted, and they assist in the identification and treatment of such sites. The cultural monitor has authority regarding site interpretation and management equal to that of the site archaeologist (notwithstanding established state and federal guidelines).

- 1. Work alongside archaeological monitors in the field and assists in the identification and treatment of Native Hawaiian cultural sites impacted or likely to be impacted by development activity.
- 2. Assist in the interpretation of cultural resources and provides on-site recommendations regarding immediate stabilization and protection of inadvertently discovered resources pending final disposition pursuant to applicable rules and laws.
- 3. Provide updates and information to identified families and descendants as well as to the Department of Land and Natural Resources (DLNR) regarding resources encountered and their status pending final disposition.
- 4. Create and maintain site/project documentation.
- 5. Assist the archaeological staff in coordinating site visits and site interpretation.
- 6. Utilize cultural protocols appropriate to the area and the resource and facilitates ceremonial protocol.

- 7. Assist in communicating any concerns raised by identified descendants regarding the protection, management and treatment of cultural sites in the development area to the developer and the Department of Land and Natural Resources.
- 8. Utilize traditional knowledge in an appropriate manner to guide development through sensitive areas and both makes recommendations and reports directly to DLNR's State Historic Preservation Division (SHPD).

Potential Requisite Qualifications:

- 1. Possess an interest in identifying and protecting Native Hawaiian cultural resources.
- Possess traditional knowledge of families and cultural landscapes in the area.
- 3. Have the respect and support of the traditional families in the area.
- 4. Possess social skills to interface with the community, governmental agencies, archaeological consultants and development representatives.
- 5. Possess an ability to communicate and represent the interests of identified lineal and cultural descendants in the project area.
- 6. Have familiarity with project area—including its history and genealogy.
- 7. Have knowledge of NAGPRA, state and federal historic preservation laws.
- 8. Have knowledge of cultural impact statements.
- 9. Possess ability to read maps, draw simple site plans and maps, write descriptions, and keep accurate records (including daily log).
- 10. Have basic knowledge of governmental permitting procedures.
- 11. Have training by professional staff with letters of verification.
 - Technical training in soil science
 - Technical training in archaeology

Attributes of a Cultural Monitor:

- Understanding and proactive in use of Hawaiian cultural protocol.
- Ability to relate to, and work amicably with, Native Hawaiian community.
- Physically capable of working in what may sometimes be rough conditions out of doors.
- Understanding of "psychographics" of the area (lifestyles, habits, routines, characteristics, uniqueness of the people and the area).
- Respect of and for the people of the area.

Protocol for Cultural Monitoring:

- 1. Arrival at Site and Preparation for Cultural Monitoring
 - A. On-site observation of archaeological needs with respect to cultural needs and protocol.
 - B. Assignment of all personnel to meet the needs of archaeological and technical cultural monitoring.
 - C. Adding technical and practical staff, as needed, for the purpose of protection of indigenous cultural and archaeological findings.
 - D. Having knowledge of all staff involved with the development of the project in the area of cultural and archaeological concerns.
 - E. Working cooperatively with the proper participating claimants to related inadvertent discoveries, or to known sites in the general area of the project.

2. Evaluation of Cultural and Archaeological Findings

- A. Evaluation with the proper professional staff with respect to cultural and archaeological materials.
- B. All cultural and archaeological materials will be handled by the appropriate party (parties) with respect to claimants' wishes, the agreement of any other relevant party (parties), and existing laws and regulations.

3. Calling in Proper Personnel

- A. When items are found that are believed to be cultural or archaeological artifacts, activity at site will be stopped to avoid any further disturbance or damage to findings.
- B. Head archaeologist on site will be notified.
- C. Appropriate personnel of State Historic Preservation Division will be notified.
- D. The proper representative of potential claimants to findings will be contacted.

4. Clearing of Site

A. Once the proper personnel have been notified, they will act according to their appropriate responsibility.

5. Quality Control Measures

- A. When cultural/archaeological site has been disturbed, whether mechanically or by person(s), site has to be approached according to relevant laws and regulations.
- B. The manner in which the findings are handled will be decided with the agreement of the State Historic Preservation Division, the head archaeologist, and the Cultural Monitoring Division, with respect to laws and regulations.
- C. Any found material(s) suspected of being infectious, contagious, or hazardous in any way, needing special handling, will be dealt with appropriately. Safety precautions will be taken by workers on site.

D. Proper precautions will be taken by the monitoring personnel to ensure the safety of found cultural/archaeological artifacts.

6. Management of Site

- A. Time deadline will be put in action according to the needs of claimants, with respect to laws and regulations, as needed.
- B. Reinterment site will be handled by the proper personnel, respecting cultural protocol.
- C. If the need to extend the deadline arises, proper advance notice must be given to the parties involved.
- D. All information regarding meetings (date, time, and place) will be submitted to all parties involved, with proper advance notice.
- E. The Cultural Monitor has the authority to halt construction and to keep the archaeologist or any associated personnel from further handling of any finds, if that conflicts with cultural protocol or relevant laws and regulations.
- F. The Director of Cultural Monitoring has the authority to request and receive data on the studies of cultural and archaeological materials that are done by archaeologists.

Ohana Lualualci Ahupua'a

Mr. Clifford Jamile Chief Engineer, Board of Water Supply 630 South Beretania Street Honolulu, Hawai'i 96813

Dear Mr. Jamile,

The current officers and members of the Ohana Luainalei Ahupua'a (OLA) extend our warm greetings and aloha! We would like to thank you and your department for the cultural sensitivity that is currently being demonstrated.

The members of our organization have met several times to consider cultural monitoring issues. We have established a subcommittee that has also met several time to discuss these issues.

We have chosen a path that will be incrementally implemented. First, we have identified several qualifications that a cultural monitor working within the Ahupua's of Lualualei must possess. These qualifications are listed in the attached minutes of the 4/17/2002 subcommittee meeting.

Second, we have met with several individuals who have shared their experiences and past work accomplishments. The subcommittee has determined that these individuals meet or exceed the qualifications as determined by OLA. These individuals are listed in alphabetical order as follows:

Hanalei Hopfe
David Nuuanu
Landis Ornellas
John Roman
Lani Tapuro

Page two
Mr. Jamile
5/6/02

It is the intent of the subcommittee to seek out Kupuna and practitioners from both within and outside of the Ahupua's to form a cultural council. This council will provide advice and guidance to cultural monitors, governmental agencies, and other interested parties, regarding cultural matters in our Ahupua's. Once the cultural council is formed, it will assume the responsibilities to prequalify individuals/groups that wish to considered as cultural monitors within the Ahupua's.

OLA recommends that a cultural monitor be brought into the planning and construction process at the very beginning, should construction occur in an area with sand deposits, is in a culturally significant area, or in an area of known burials. In an areas of unlikely impact, a cultural monitor should be on call, and immediately respond, should an inadvertent discovery of Iwi Kupuna or other culturally significant artifact, or culturally significant midden layer be exposed.

Once again thank you for the cultural sensitivity shown by the department and the ike (insight) to hire Communications Pacific to conduct the outreach on your behalf.

Should you have any questions, please feel free to call me at 668-8873.

Mahalol

Louella "Cuddles" King President, Ohana Lualualei Ahupua'a

Cc: Mr. Howard Tanaka, Program Manager BOW
Ms. Kristina Kemmer, Communications Pacific Inc.

Oluna Lualualei Ahupua'a

CULTURAL MONITCHING SUBCOMMITTEE of 4/17/02, 7:15-9:00pm.

Attendance: Melva Aila, William Aila Jr., Alice U. Greenwood, Tom Lenchanko, Pat Patterson. Cynthia K.I., Rezentes, and Betty Waller. Missing: Hanalei Hopfe.

PULE by Alice Greenwood

I reviewed the proposed QUALIFICATIONS for a Cultural monitor:

- 1. Well respected in the community.
- 2. Can work with the community.
- 3. Cari work with the families.
- 4. Can work with Federal, State, and Private Agencies.
- 5. Needs to show respect for all involved.
- 6. Has sensitivity for iwi Kupuna.
- 7. Knowledgeable of the area.
- 8. Knows some genealogy of the area.
- 9. Monitor must come from the area.

Additional qualifications

- 10. Assist in finding lineal descendants.
- 11. Assist in finding cultural descendants.
- · 12r Monitor must be alert and observant of heavy machinery in his or her surrounding Area.
- 13. Qualifications could be reviewed or amended at anytime.

Recommendations:

- 1. Ohana Lualualei Ahupun'a will form a council for resources consisting of geneaology, information, and history of the area.
- 2. The resource council would prequalify the cultural monitor.
- 3. The resource council would advise the cultural monitor.

Potential resource council members:

1. Paul Blakemore 2. Alice Greenwood 3. Lydia Tavares

Potential cultural monitors:

1. Landis Ornellas 2. David and Mahi Nuuanu 3. Keone Nunes 4. Walter Bea Aldeguer

William would contact the potential cultural monitors and invite them to the next sub committee meeting to kuka kuka. The Ohana Lualualci Ahupua'a cultural monitoring sub committee would initiate the process of prequalifying cultural monitors. The Ohana Lualualci Resource council would continue the process. As more people become more involved more cultural monitors and resource people would come forward.

Page 2

William would also contact the other members of the Ohana Lualualei ahupua'a council that did not attend the sub committee meeting and explain to them what was discussed at the previous sub committee meeting. Members he would contact are Cuddles, Monique, Hanalei H., and Wayne and Mona Gregory. The urgency for the members to be updated is due to projects holding to their time lines to begin in early May. Our general meeting will not take place until the fourth Tuesday which is May 28, 2002.

William would also notify the IIWS and Communications Pacific about the Ohana Lualualei's cultural monitoring sub committee recommendations.

Note: Cultural monitor would be the voice. The main focus Malama Kupuna.

Project coordinator will hire cultural monitor. Kehau Silva is the archaeologist hired by The BWS for their Makaha project.

The closing PULE was done by Pat Patterson and the meeting adjourned at 9:00pm. The next subcommittee meeting is scheduled for Wednesday, May 1, 2002, at 6:30pm. At the Wai'anae Small Boat Harbor conference room.

Submitted by Melva Aila

SECTION 2.0 SCOPE OF SERVICES

2.1 DESCRIPTION OF WORK

The Consultant shall assist BWS in identifying historic and cultural resources and/or burials in the project areas and shall provide recommendations for mitigation of potential adverse impacts upon these resources and/or burials.

2.2 DUTIES AND RESPONSIBILTIES

- A. The Consultant shall report to and act in consultation with BWS and his/her ahupua'a council.
- B. On-site monitoring of pipeline excavation:
 - 1. In areas identified from the burial mitigation plan¹ as having a high probability for the potential inadvertent discovery of iwi kūpuna (ancestral remains), the Consultant shall be present and monitor all excavation activities except and unless the Consultant, by virtue of his/her knowledge, deems the level of work appropriate to "on-call". (Excavation activities are limited to active removal of material and do not include activities such as pipe-laying and backfilling.)
 - 2. In areas identified from the burial mitigation plan as **not** having a high probability for the potential inadvertent discovery of iwi kūpuna, the Consultant shall be "on-call" and shall respond whenever there are inadvertent discoveries of iwi kūpuna. When the Consultant is on-call, he/she shall be available by telephone and able to reach the construction site within thirty minutes from the time the request call was placed.
 - 3. The boundaries for this contract shall be all excavation on the project from Hakimo Road to Yuen Store, Farrington Highway.
- C. Attend meetings, as needed and requested by BWS, with BWS, the Contractor, other agencies, and the community to discuss and assess project impacts upon cultural resources and/or burials and mitigation measures for those potential impacts.
- D. Work with archaeologists, and/or the Department of Land and Natural Resources' (DLNR) State Historic Preservation Division (SHPD), and/or the SHPD's Burial Sites Program (BSP) to familiarize the construction team(s) with Hawaiian cultural issues and protocols. (The construction team(s) includes, but is not limited to, BWS, Contractor, archaeologists and BWS agents.)

Lualualei

¹ Burial Mitigation Plan for Board of Water Supply Work along Farrington Highway, Cultural Surveys Hawai'i, Inc., June 2002

- E. Establish and maintain regular communications with BWS, other agencies, and the community on matters relating to cultural resources and/or burial sites in the project area.
- F. Work with the Native Hawaiian Community and ahupua'a council to provide BWS with the community's preferred process for the handling of inadvertent discoveries of nā iwi kūpuna or cultural resources prior to groundbreaking or soon thereafter.
 - Issues pertaining to the disposition of cultural resources inadvertently discovered in the project area following consultation among the parties in 2.2 C shall be taken before the ahupua'a council of the project area for consultation.
- G. Work with archaeologists in the field and assist in the identification and treatment of Native Hawaiian cultural sites, including providing on-site recommendations regarding the immediate stabilization and protection of inadvertently discovered resources pending final disposition pursuant to applicable laws and regulations.
- H. Provide information and updates to identified families and descendants, the ahupua'a council, the O'ahu Island Burial Council (OIBC) and DLNR regarding resources encountered and their status pending final disposition.
- I. Assist the archaeological staff in coordinating site visits and site interpretation.
- J. Utilize cultural protocols appropriate to the area and to the identified cultural resource to facilitate ceremonial protocol.
- K. Assist in communicating any concerns raised by identified descendants and/or the ahupua'a council regarding the protection, management and treatment of cultural sites in the project area to BWS, DLNR and OIBC.
- L. Utilize sensitive traditional knowledge in an appropriate manner to guide construction through sensitive areas and make both recommendations and reports to BWS, SHPD, and the ahupua'a council.
- M. If necessary, accept training on identification of cultural and historic resources and burial remains.
- N. Follow all project, county, state, and federal safety rules and regulations.
- O. Keep a detailed log of hours worked and work description.
- P. Provide a weekly written report of activities.
- Q. Provide a monthly invoice detailing hours worked and work description for the duration of the project.

2.3 STIPULATIONS

- A. <u>Qualifications of Cultural Consultant</u>. The Cultural Consultant must meet the following qualifications:
 - 1. Must be culturally sensitive and culturally competent; must know and be able to carry out traditional customs and protocols for dealing with wahi pana (sacred places) and/or burial sites for the project ahupua'a.
 - 2. Must have a cultural affiliation to the affected project area and a commitment to the area's past, present and future; must know the precontact and post-contact history and cultural resources of the ahupua'a and its relationship to the broader community around it.
 - 3. Must be connected and committed to the lands in question; should reside in the ahupua'a where the project is located.
 - 4. Must be capable of and committed to responding to and handling assignments relating to the project, including attending meetings with the Contractor and the community (see position responsibilities above).
 - 5. Must have sensitivity and ability to communicate on behalf of the Native Hawaiian community with Contractor, BWS, and other agencies.
 - Must be respectful of others, honoring Hawaiian practices—including, but not limited to, mālama 'āina and mālama wai.

B. Protocol for Cultural Consulting.

- 1. Cultural Consultant Selection:
 - a) BWS informs the ahupua'a council of the proposed project and requests a list of potential cultural consultants from the ahupua'a for the project.
 - b) Ahupua'a council recommends a list of cultural consultants who have been pre-screened and pre-qualified by that ahupua'a council according to its own adopted qualifications and that of BWS.

- c) BWS chooses a Consultant (or Consultants) and informs the ahupua'a council and the project Contractor of its choice.
- d) BWS contracts with the Cultural Consultant and requests a historic/cultural overview of the project area.
- e) The Cultural Consultant submits a historic/cultural overview of the project area and potentially affected sites.
- f) The Cultural Consultant works with the Native Hawaiian Community and ahupua'a council to provide BWS with the community's preferred process for the handling of inadvertent discoveries of nā iwi kūpuna or cultural resources prior to groundbreaking or soon thereafter.
- g) BWS notifies the Cultural Consultant of the meeting schedule and assigns the Cultural Consultant to work with the Contractor.
- 2. Arrival at Site and Preparation for Cultural Consulting:
 - a) Observe and assess cultural needs and protocol on site.
 - b) Meet and confer with project team to identify cultural consulting tasks.
 - c) Identify and work with other team members and agencies, as needed, for the purpose of protecting indigenous cultural and archaeological findings.
 - d) Work cooperatively with participating claimants, if any, to sites—known or unknown—in the project area.
- 3. Evaluation of Cultural and Archaeological Findings:
 - a) Evaluate findings with professional staff who will handle cultural and archaeological materials.
 - b) Facilitate mitigation through contacts with the Contractor, agencies, the ahupua'a council and claimants.
 - c) Ensure that all cultural and archaeological materials are handled by the appropriate party (parties) with respect to claimants' wishes, the agreement of any other relevant party (parties), and existing laws and regulations.

d) If the handling of discoveries by archaeologists, in accordance with relevant laws and regulations, should conflict with cultural protocol, the Cultural Consultant shall, within 48 hours of working with relevant authorities, recommend alternate means of handling the discoveries.

4. Calling in Proper Personnel:

- a) Head archaeologist on site will be notified by Herbert Chock & Associates or the Contractor.
- b) Appropriate personnel of SHPD will be notified by the Archaeologist.
- c) The proper representative(s) of participating claimants to findings will be contacted by Cultural Consultant.

5. Quality Control Measures:

- a) When a cultural/archaeological site has been disturbed, whether mechanically or by a person(s), the site must be approached according to guidelines outlined in relevant laws and regulations.
- b) After the decision has been made by BSP to disinter or to leave in place an inadvertent discovery, the manner in which the discoveries are handled will be decided with the agreement of SHPD, BSP and the head archaeologist in accordance with applicable laws and regulations and in consultation with the Cultural Consultant.

Lualualei -7-



COMMUNICATIONS PACIFIC

To:

Recognized Descendants of Waikīkī

From:

Alani Apio

Cindy McMillan

Subject:

SUMMARY OF THE DECEMBER 4 DISCUSSION REGARDING THE WAIKIKI MEMORIAL

Date:

December 12, 2003

At the December 4, 2003 descendant's meeting, the following points were made regarding the Waikīkī Memorial:

- The Waikīkī Memorial needs to be maintained, and all claimants must help out. We need to schedule regular cleanups.
- The city is preparing 24-hour parking permits for descendants.
- Information has been drafted so there is something to distribute to people who ask about the Memorial.
- There is space available at the city's information kiosk where the brochure could be placed should descendants want to take advantage of the opportunity.
- The descendants will tell their own story.
- Keys to the Memorial will be made for \$4.99.
- Cha Thompson, Tihati, has said her group can help with maintenance if the descendants need assistance.
- lwi from BWS and HECO projects could be placed in the Memorial.

Communications Pacific is happy to help distribute information to Waikīkī descendants. If you have something you would like to be sent to the group, please contact me at 543-3581.

CLM:hs

Aloha Kākou e ka 'Ohana 'o Waikīkī Ahupua'a:

Welina mai no kākou pākahi ā pau! Trust that you are all well and continuing in your own families the traditions we hold dear relating to the care of our Kūpuna, those living as well as those whom we hold in our hearts and memories.

I have been asked to help coordinate a meeting of all of us to discuss a matter of great importance relating to future excavation projects in Waikīkī. As you all are aware, future discoveries of ancestral remains - <u>iwi</u> - will need to be addressed in an appropriate cultural manner prior to their unearthing. Because of your previous participation in and commitment to caring for ancestral remains placed in Kāhi Hāli'a Aloha - the ancestral memorial at Waikīkī – I believe you will be pleased to know that your <u>mana'o</u> is being sought by developers prior to the commencement of their upcoming projects in the Ahupua'a of Waikīkī. In light of this, I am hopeful you can attend this meeting on December 4, 2003 at 5:30 p.m. in the Atherton Halau at the Bishop Museum (a plate lunch meal will be provided). Please come with your <u>mana'o</u> about how best we can work together with developers, contractors, or whomever should want or need to do planned projects in this Ahupua'a. You will find enclosed some materials from Communications Pacific regarding the Board of Water Supply Wai'anae cultural consultant program which you may want to review before the meeting. Also included is a draft document from 'Ohana Keohokālole entitled Waikīkī 'Aha Meheu. We are not obligated to follow any of it, but these materials may be possible starting points for discussion.

If you can attend this meeting, please inform Carol Pitner of Communications Pacific at (808) 543-3507 to confirm your attendance.

Aloha a hui hou kakou - hope to see you on December 4.

No nā Kūpuna,

Gustia Flohokalole
Emalia Keohokalole

'Ohana Keohokālole

Attachments



COMMUNICATIONS PACIFIC

To:

Recognized Descendants of Waikīkī

From:

Alani Apio

Cindy McMillan

Subject:

DECEMBER 4 MEETING SUMMARY AND NEXT STEPS

Date:

December 12, 2003

INTRODUCTION

On behalf of the Board of Water Supply (BWS) and Hawaiian Electric Company (HECO), Communications Pacific (CommPac) would like to thank all those who attended the December 4 meeting to discuss a proactive cultural consultant process and program for infrastructure projects in the Waikīkī ahupua'a.

In attendance:

Recognized Descendants: Nalani Gersaba, G. Kealoha Kuhea, Emma Keohokālole, Emalia Keohokālole, Adrian Kealoha Keohokālole, Dennis Ka'imi Keohokālole, Kanaloa Koko, Nalani Olds, and A. Van Horn Diamond

Guests: Ben Kaholi, Kawehi Kanui, Toby Lawson, and Mana Fonesca

Board of Water Supply representatives: Francis Fung and Kevin Ihu

Hawaiian Electric Company representatives: Robbie Alm and Lori Hoo

Communications Pacific staff: Alani Apio, Cindy McMillan, and Trudy Wong-You

PURPOSE OF MEETING

The Board of Water Supply (BWS) and Hawaiian Electric Company (HECO) are planning infrastructure improvement projects in the Waikīkī ahupua'a. They are seeking the descendants' mana'o prior to construction. A bigger goal is to develop a proactive cultural consultant process and program that will empower descendants to provide input prior to any construction projects in the ahupua'a.

- Work should be done out of love and aloha. Don't like the idea of being paid (for cultural consultation as some communities have opted to do).
- The descendants could be an advisory group and take an active role in future projects in Waikīkī.
- The group might wish to be recognized as a "Hawaiian Organization." That would give it a greater voice.
- These are some ideas. Everyone should think about them and add their own suggestions. We can talk about them at the next meeting.
- All suggestions should be sent to CommPac for distribution to the group.

RECOMMENDATIONS

Following are recommendations from the descendants:

- Archaeological monitoring must be done, especially in areas with previous discoveries.
- It is important to document where iwi are found and to work with descendants to avoid going into areas where remains may exist, if possible.
- Must establish records of remains and discoveries for posterity and future work. Keep plans of old pipelines and other subterranean infrastructure.
- Make sure information is included in all current and future records (GIS maps an option). Could use GPS locator to record positions.
- Look for old maps before proceeding with project. Also, check documents and surveys at the State Historic Preservation Division office in Kapolei.
- · Ask military to use scanning technology to detect iwi.
- Not all archaeologists are alike hire one with knowledge of Hawaiian history and culture. Might need to consult with historians or hire someone to conduct historic research.
- There are more events along Kalākaua than those listed on the BWS project summary. Need to confirm any large convention coming in or any group planning to march along Kalākaua. Check Convention Center list of events.
- Descendants would like to receive a copy of the Notice to Proceed when it is issued.
- Would be helpful if someone from Wai'anae attended one of our meetings to tell us how it's working there and answer questions?

CULTURAL CONSULTANT PROCESS MEETING FOR THE WAIKĪKĪ AHUPUA'A DESCENDANTS

Thursday, December 4, 2003 5:30 p.m. Atherton Hālau – Bishop Museum

- Welcome
 Pule Wehe
 Introductions
 Dinner
 Project Introduction What the Board of Water Supply (BWS) and Hawaiian Electric Company (HECO) are asking of the descendants:

 Brief history of cultural consultant process
 Current status of cultural consultant process
 Brief Introduction of Projects and Timelines:
 BWS's Kalākaua Avenue project
 HECO's E.O.T.P. Ribh Alm
 - 7. Descendant Kükākükā Session
 - 8. Summary/Next Steps/Announcements
 - 9. Pule Ho'oku'u

Warrico

CULTURAL SURVEYS HAWAI'I Archaeological and Cultural Impact Studies

September 29, 2004

Ms. Mary Carney and Mr. Kana'i Kapeliela State Historic Preservation Division Burial Sites Program

By fax: 692-8020 and 587-0044

Subject:

Request for a list of individuals and contact information for persons and families previously recognized by the SHPD as lineal and/or cultural descendants of

Waikiki, O'ahu

Aloha Mary Carney and Kana'i Kapeliela:

Cultural Surveys Hawai'i (CSH) is presently involved in a number of projects in east, west and central Waikikī including Cultural Impact Assessments, Archaeological Inventory Surveys that require consultation with individuals knowledgeable about the project area's history, a burial treatment plan, etc. We are requesting a list of individuals and contact information for persons and families previously recognized by the SHPD as lineal and/or cultural descendants of Waikikī.

We are aware that your office is understaffed and extremely busy and if appropriate we would certainly be most willing to send CSH staff to examine SHPD files to facilitate timely compilation of such a list.

Mary would you please be so kind to see that Mr. Van Horn Diamond, OIBC chair is copied on this correspondence.

Mahalo for your kõkua.

David W. Shideler Office Director

Cultural Surveys Hawai'i

cc. Mr. Van Horn Diamond, OIBC chair

sand an Hill



February 28, 2005

Alpha Van

This letter and enclosures are being sent to you either because you have contacted us directly, or because in our research and/or conversations with the State Historic Preservation Division (SHPD) and others, your name came up as one who may wish to establish lineal or cultural descent to any human remains that may be discovered in the Outrigger Enterprises, Inc.'s (OEI) Waikīkī Beach Walk Project (Project) area. This Project is located in the Lewers-Kālia area in Waikīkī.

Our company, Ku'iwalu is assisting OEI in the historic preservation review process for this Project. We wish to emphasize that demolition and construction has not yet begun and so far we have not discovered any human remains on site. Instead we are engaging in an early consultation process in an effort to search for possible lineal and cultural descendants in the event that any are discovered. Please be assured that in the event of any discovery, any human remains will be treated with utmost respect in the most culturally appropriate manner.

We have enclosed for your information a copy of a fact sheet, including a map of the Project and a copy of the notice that was published in early January. We have also included a claim form that must be completed and submitted to the SHPD if you would like to be considered as a recognized cultural or lineal descendant for any human remains that may be discovered in the Project area.

- Lineal descendant is a claimant who has established to the satisfaction of the burial council, direct or collateral genealogical connections to certain native Hawaiian or non Native Hawaiian skeletal remains.
- Cultural descendant is a claimant recognized by the burial council as being the same ethnicity, or a claimant recognized by the council after establishing genealogical connections to Native Hawaiian ancestors who once resided or are buried or both, in the same ahupua'a or district in which certain Native Hawaiian skeletal remains are located or originated from.

All interested parties that would like to file a claim for this Project should provide any information to Kana'i Kapeliela, Cultural Historian, State Historic Preservation Division, 555 Kākuhihewa Building, 601 Kamokila Blvd., Kapolei, HI 96707 (Tel:692-8037 or 692-8015 or fax: 692-8020).

Please feel free to share this information with your 'ohana and anyone that you believe may wish to establish a claim. Also do not hesitate to call Ku'iwalu (Dawn Chang or Lani Ma'a Lapilio) if you should have any questions about this Project at 539-3580 or if you have any knowledge that you may wish to share about the Project area. We would especially like to hear from you if you are familiar with any historic, cultural, traditional or sacred properties that may lie within the Project area. Any information you provide us will be held in utmost confidence and shared only with your permission.

Mahalo for your time and attention to this important matter. Aloha a hui hou.

Me ke aloha pumehana,

DAWN N.S. CHANG

LANI MA'A LAPILIO

Pralin a Popular

Enclosures

Outrigger Enterprises, Inc. Waikīkī Beach Walk Project

Informational Meeting
Outrigger Reef on the Beach Hotel
Wednesday, June 22, 2005
6:00 - 8:00 pm

Meeting Notes

Attendees: Dawn Chang, Lani Ma'a Lapilio, Pila Kikuchi, Mike Finney, William D. Souza, Justin Keli'ipa'akaua, EiRayna Adams, Brad Adams, Adrian Keohokalole, Dennis Keohokalole, Emalia Keohokalole, Amelia Gora, Kealoha Kuhea, Mana Stan Fonseca, Carolyn Norman, Nalani Olds, 'I'ini Patelesio

I. Opening Pule

The meeting began with a tour of the construction site, guided by Pila Kikuchi, Tom Dye and Mike Finney. The tour started at 6:15 pm and ended at 7:00 pm. The 'ohana then moved to the meeting room where a wonderful dinner was hosted by Outrigger Enterprises Inc. Pule offered by Mana Fonseca. The meeting reconvened at approximately 7:30 pm.

II. Update on Construction Activities

Mike Finney stated they are completed with the major demolition part of the project and will be raising the elevation with fill (concrete debris). Piling machine will be on site July 7 and will start installing piles on July 19, 2005. The garage structure (above ground) should be completed by the end of January 2006.

III. Update on Archaeological Activities

Tom Dye participated in the site tour and gave an update at that time. Tom indicated that he is being contacted by the contractor to do archaeological monitoring when they are working in areas of ground disturbance (i.e. removal of trees).

IV. Consultation Process

Dawn Chang explained that we are coordinating with the archaeologists and they are doing inventory survey in the areas where new utilities will be laid. OEI has agreed to treat all native Hawaiian burials that are discovered on the project site as previously identified and not inadvertent discovery(s).

Dawn initiated a discussion on ground rules to provide a foundation for our 'ohana meetings. Basic principles that all present agreed to were the following:

- There shall be mutual respect for all and therefore, when one person is talking the rest of the 'ohana will permit that person to talk without interruption, and everyone will be afforded an opportunity to speak as everyone has something important to share;
- Because everyone times is important, meetings should run no more than 2 hours (unless otherwise agreed to), therefore we all agreed that at times everyone will be asked to limit the amount of time they talk so everyone will be given an opportunity to speak; and
- This entire process (including the meetings) will be an inclusive process therefore everyone will be given an opportunity to participate in the process.

Discussion also included the fact that our mailing list is largely comprised of lists and names of potential claimants from SHPD (Burials Division). We also included other native Hawaiian organizations and interested persons. Any names that may have been left out were not done so intentionally and we welcome any additional contact information from the group. E kala mai and please help us to correct any typographical or erroneous information.

The development of our meeting agendas is a collaborative process so please call us with any input or suggestions you may have. This includes the meeting notes. Dawn also shared that it is our practice that the notes will not identify names but make general references when comments are made. No one had any objection to that practice.

Dawn thanked OEI for hosting our group and inserted a disclaimer to the group that we will probably not be able to have this kind of meal at all of our future meetings.

IV.A. Report from Families

Dawn asked for reports on families from issues discussed at the previous meeting. Families had nothing to report and decided to move to the current agenda.

IV.B. Discussion on prioritizing issues for discussion

In light of the limited time for discussion, Dawn suggested that we use the remaining time to identify priority issues. The discussion will be on prioritizing and not discussing the substance of the issues at this time. Each 'ohana was asked to give their mana'o on what they feel the priority issues are:

Issues identified by the group were:

- temporary curation
- · who should be notified if iwi are discovered
- when will people be notified
- unusual desecration
- cultural monitors
- verification
- role of archaeologist
- permanent disposition

The group was then asked to identify the issue that they felt should be discussed first.

Priority Issues List:

- 1. Temporary Curation
 - a/c trailer
- 2. Who will be notified?
 - Legal process
- 3. When will people be notified?
- 4. Cultural monitors
 - Standards
- 5. Verification
 - Claimant status
- 6. Role of archaeologist
- 7. Permanent disposition
 - Burial treatment

A suggestion was brought up that #2 (who will be notified) and #3 (when will people be notified) on the list should be combined into one issue. Everyone agreed. The group was then asked to identify the issue they felt should be discussed first. The issue of who will be notified and when (#2) received 8 votes and the issue of temporary curation (#1) received 4 votes. These issues will be taken up at the next meeting in accordance with the will of the group.

A concern was raised that only recognized descendants should provide mana'o on the first issue of who will be notified. A request was made by another claimant asking that someone from the state, SHPD or the legal advisor to the OIBC attend the next meeting to provide the group accurate legal information including the interpretation of rules regarding the process of notification. Dawn stated that she will put a call into the attorney general's office and SHPD but does not promise that they will send a representative.

A question was asked about the process that we are following regarding early consultation with families and whether it has been done before. As far as we know, this group is a model for this process as we have learned from past experience that there is great value in being inclusive and listening to the concerns of families as early in the process as possible.

Another concern was raised by a claimant to make clear that from now until the next meeting, if any iwi are found that ALL be notified. The claimant also stated that the iwi cannot be left in situ and requested that there is a place for the iwi if found.

V. Next Meeting

Dawn asked for suggestions on the location/time for the next meeting. It was expressed that driving into Waikīkī is difficult especially during peak traffic hours. Other suggested sites for future meeting were Queen Lili'uokalani's Children's Center, Queen Emma's Summer Palace and 'Iolani Palace. We are looking at scheduling the next meeting on July 20, 2005.

VI. Closing Pule

Closing pule offered by Adrian Keohokalole. The meeting adjourned at 8:00 pm



July 7, 2005

Aloha pumehana kākou e nā hoa,

You are invited to the third informational meeting on the Outrigger Enterprises, Inc.'s (OEI) Waikīkī Beach Walk Project (Project). This letter is being sent to you because you (or the organization you represent) are on our mailing list as one who may wish to establish lineal or cultural descent to any native Hawaiian human burial remains that may be discovered on the project site.

Meeting details are as follows:

Site:

Kana'ina Building (Old Archives building)

'Iolani Palace grounds

The building is located between the Library and the Palace. You may park in the

metered stalls nearby.

Date/Time:

Wednesday, July 20, 2005

6:00 pm - 8:00 pm

Dinner:

Will be hosted by Outrigger Enterprises, Inc.

Please reply no later than Monday, July 18, 2005 so we can make sure we have

enough food for everyone. Call 'I'ini at 539-3580.

We will be presenting a project update and continue our discussion on a plan to address the respectful and proper care of any iwi kūpuna that may be discovered on this project. The first items for discussion will be issues related to notification and temporary curation. We hope that you will take the time to discuss this with your families and we look forward to hearing your input. If you have anything in writing please send it to us before the meeting so we can make copies for others in the group.

We have enclosed (draft) copies of the agenda and meeting notes. Again, please RSVP to 'I'ini at 539-3580 no later than Monday, July 18, 2005 so we can get an accurate count for the food.

Feel free to call either Dawn Chang or Lani Ma'a Lapilio if you have any questions or concerns at 539-3580. Our fax no. is 539-3581. Mahalo for your time and attention to these important matters.

> 'O māua no me ka ha'aha'a. fani Man fapilio

LANI MA'A LAPILIO

Principal

DAWN N.S. CHANG Principal

**NOTE:

Parking on 'Iolani Palace Grounds in marked metered stalls after 6:00 pm is FREE.



Outrigger Enterprises, Inc. Waikīkī Beach Walk Project

Informational Meeting
Kana'ina Building - 'Iolani Palace Grounds
Wednesday, July 20, 2005
6:00 - 8:00 p.m.

AGENDA

- I. Opening Pule
- II. Update on Construction Activities (Pila Kikuchi/Mike Finney)
- III. Update on Archaeological Activities (T.S. Dye & Associates)
- IV. Consultation Process (Dawn Chang/Open Discussion)
 - A. Report from Families
 - B. Discussion on Agreed Upon Priority Issues
 - 1. Notification Who will be notified and when will people be notified in the event a native Hawaiian burial is encountered on the Project Site;
 - 2. Temporary Curation Where should the iwi kūpuna be temporarily curated in the event native Hawaiian human burial remains are encountered during construction.
 - C. Prioritizing other issues identified by the families as important for discussion.
- V. Next Meeting
- VI. Closing Pule

II.D.6.

P. P. B. S. FORMS

(Plan, Program, BUDGET SySTEM)

REMARKS
 2005
 2006
 2007
 2008

 07/01/05 - 06/30/06
 07/01/06 - 06/30/07
 07/01/07 - 06/30/08
 07/01/08 - 06/30/09
 STRATEGIC PRIORITY#: **OBJECTIVES** GOAL:

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CAPITAL IMPROVEMENT PROJECT

Name & Identification:						
Location:		Specifi	Specific Site:			
A.	CIP Purpose:					
В.	Basic CIP Data		***************************************			
	1. CIP Duration:	Start Date:	Close Date:_			
	2. Total Cost:	Total # of Phase:				
	3. Cost Break-out Per Phase:					
	4. Duration Break-out/Phase:					
	5. Objective/Phase:					
	6. Other:					
C.	Funding Data					
	1. Type of Funding: Sources I	dentified Overall/Per Phase				
	2. Conditions to Fund/Funder					
	 Amount(s) Available/Acces a. To Pay: b. To Be Paid: 					
	4. Cost: Amount Paid A	Amount Outstanding with Sus inal Payment Due chedule of Payments	pense Date			

D. Contractor(s) Overall/Per Phase = How Awarded

OBSERVATIONS, RECOMMENDATIONS, PROPOSALS

[PROPOSALS AND RECOMMENDATIONS TO ADDRESS PROBLEMS PRESENTED IN THE AUDITOR'S REPORT AND OTHERS]

I. FINDINGS AND RECOMMENDATIONS

1. GENERAL OBSERVATIONS AND RECOMMENDATIONS

Federal Grants

A centralized grant administration function in the Chairman's office would be appropriate to oversee all grants that the divisions under the department have received and thereby the internal controls necessary to operate within the federal funding framework efficiently and effectively. With the internal controls in place under a centralized grant administration function in the Chairman's office more and larger federal grants may be attainable to the department. With these controls in place DLNR can be more aggressive in pursuing more grants.

The National Parks Service Historic Preservation Fund has placed Hawaii 52nd out of 56 in receiving federal funds. We are the lowest state receiving federal funding with 2 territories Puerto Rico and District of Columbia receiving more. There is definitely a need for improvement in the funding situation.

NAGPRA (Native American Graves Protection and Repatriation Act). An example of one of several federal program grants the department can access is NAGPRA (Native American Graves Protection and Repatriation Act), under the jurisdiction of the National Parks Service (NPS). In discussions with the National Parks Service program administrators and grantors there are a lot of federal grant moneys available to the state through various means and program. This federal agency can provide several block type grants up to \$75,000 for each project/program. These project/programs may be lumped together as part of a larger project or program. In a meeting with the head of the NAGPRA program in NPS, he was more than willing to give the department and the state more federal moneys almost immediately. In fact, upon returning home from Washington DC, Keith Siu received an e-mail that stated that if we submit a proposal immediately and it would probably be granted, implying that there was leftover federal moneys available for this fiscal year which we can tap.

Administration for Native Americans (ANA), Department of Health and Human Services. Another federal agency willing to provide us federal grant funds is ANA. This agency has just finished providing a \$300,000 grant to

Hui Malama for burial repatriation. This agency has not had any dealings with the DLNR or any of its agencies or representatives. We find this quite interesting in that either DLNR or any other related state agency has not approached this federal agency, willing to provide federal funds to the state.

These are but two examples we have found on our trip to Washington DC and subsequent discussions with the major players for federal grants funding. It seems that we may be missing the boat on receiving federal grants and funds for respective programs under DLNR. We need to be more aggressive in attaining more federal grants and funds.

Staffing (FTE) And Federally Funded Positions

Need to review how federal moneys are being used to fund positions and what are the matching costs to the state general fund. DLNR can maximize the federal moneys to supplement the program positions to provide a stable working environment.

Federal Recordkeeping Requirements

A grants management program should be established within the Office of the Chairman to oversee all grants by all the divisions of the department.

As in all grants, recordkeeping requirements are necessary. This is more so for federal grants, where the awarding agency requires timely and properly developed forms from recipients. As have been brought forth by the Legislative Auditor, the department failed to meet federal requirements for submitting audited financial statements, which could jeopardize current or future federal funds. Timely and accurate reports are a normal prerequisite part of managing these grants.

2. FINANCIAL AUDIT OF THE DEPARTMENT OF LAND AND NATURAL RESOURCES Report No. 00-11, Dated April 2000

RECOMMENDATIONS

"...the department should seek legislative authorization for any federal moneys credited to its general fund."

SUMMARY OF FINDINGS

"The department's financial operations failed to ensure the timely submission for approval of a federal grant for the Historic Preservation Fund Program. The department also credited subsequent year's general fund expenditures with federal grant funds received which enables the department to expend beyond its legislatively authorized ceiling. In

addition, the department failed to meet federal requirements for submitting audited financial statements, which could jeopardize current or future federal funds..." (p. 7)

II. PROPOSALS AND RECOMMENDATIONS

Establish Executive Assistant to the Chairman of the Department of Land and Natural Resources position.

- Assists the Chairman address problems in the state Historic Preservation
 Division brought about by the Legislative Auditor's Report, "Financial
 Audit of the Department of Land and Natural Resources," No. 00-11,
 Dated April 2000 and other observations, as well as other concerns.
- Assists the Chairman in legislative matters.

Keith Siu be transferred from the Judiciary to the Department of Land and Natural Resources, Office of the Chairman through a temporary intergovernmental assignment. HRS Chapter 83, Temporary Intergovernmental Assignment of Public Employees, provides the enabling legislation to carry out this.

IV. ORGANIZATIONAL STANDING

- A. CORRESPONDENCE TO P. YOUNG, DLNR DIRECTOR

 1. JUNE 10, 2005 2. OCTOBER 8, 2005

 RE/ KALEIKINI V. KEANAAINA APPEAL & ADJUDICATION

 OF LINEAL DESCENDANT RECOGNITION
 - OIBC MINUTES, 10/12/2005 MEETING

 Epp. 5-9 & 10 paragraphs 1-3 incl. Re/Appeal & Adjudication of

 LINEAL Recognition (Kaleikini/Keanaaina)
 - " MEMO, 11/2/2005, IBC CHAIRS/VICE-CHAIRS

 RE/ LEGISLATIVE PROPOSAL (FIRST DRAFT, 10/3/05)

 1. ENABLE LINEAL RECOGNITION APPEAL
 - 2. DLNR RECOMMEDIATION & OIBC RECOGNITION
 - · ATTORNEY GENERAL ODINION RE/LINEAL DESCENDANCY (RECOGNITION & BURIAL SITUS) TO SED. COICEN Handburg [REQUESTED] - 7/19/2005
- B. DESCENDANCY: CONCERN RE/FRAUD
 - · DESCENDANCY CLAIM APPLICATION STATE FORM)
 - · OIBC MEETING, MINUTES (excerpt), 8/14/2002 CONCERN RE" Special treatment 1 & application form 15 optional.

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A. VAN HORN DIAMOND

10 June 2005

Mr. Peter Young Chairperson, Board of Land & Natural Resources Director, Department of Land & Natural Resources State of Hawaii Honolulu, Hawaii 96813

Dear Chairperson and Director Young:

This letter is prompted by concern for process, role & responsibility --- so that integrity not only governs but prevails!

Ms. Melanie Chinen, Historic Preservation Division Administrator, informed me that you are forming an appellate panel to hear an appeal of an Island Burial Council decision, pursuant to the applicable and appropriate provisions of Chapter 6 E (HRS) and Chapter 300 (HAR). Further, rightly or wrongly, I have presumed and interpreted that this specific appeal seeks to reverse an Oahu Island Burial Council lineal descendant recognition. Nota Bene. I have not received any written material pertinent to the anticipated appeal — just the initial meeting schedule of the panel.

Therefore, I herein inform you, with great respect, sincerity and appreciation, I cannot serve on this specific appellate panel based on what I believe is the appeal. Moreover, I respectfully request that whether or not an Island Burial Council Chair or its designee can serve on an appellate body hearing an appeal from that particular Island Burial Council be (1) formally referred to the Attorney General for its formal review; and, (2) that the Attorney General issue a formal written opinion in this matter. Further, it might be helpful to request the Attorney General include, in this formal legal opinion, what subjects may be appealed to the appellate body involving Island Burial Council decisions.

Ms. Chinen indicated you wished me to serve on the appellate panel. This is much appreciated. However, I feel the hearing, from the outset, needs to be seen as open, even-handed, balanced and objective. Having me, the present Oahu Island Burial Council Chair, as a sitting member of the appellate body is most apt to be deemed inappropriate and unacceptable — even if the panel rendered a rightly-ordered reply to the appeal. Hence, I opt not to serve. The singular exception is a formally-written legal opinion from the Attorney General affirming that it is appropriate and legal for me to serve on this specific panel.

Finally, given the appeal seemingly involves the Oahu Island Burial Council, who and how will the Oahu Island Burial Council be properly and fully represented in this matter? This naturally presumes that the Hawaii State Department of Land & Natural Resources, pursuant to applicable and appropriate provisions of Hawaii Revised Statutes (HRS) and the Hawaii Administrative Rules (HAR), is the designated "lead agency" in providing administrative support and/or assistance, including caliber legal representation throughout, to the Island Burial Councils. In this instance, it is the Oahu Island Burial Council (OIBC), collectively and individually, which relies on the Department of Land & Natural Resources for assistance.

Thank you for your interest and respect in this regard.

Respectfully & sincerely,

A Van Horn Diamond, Chairperson Oahu Island Burial Council

A. VAN HORN DIAMOND

October 8, 2005

Dear Chair and Director Peter Young:

I am writing for myself as an OIBC member and as its current Chair, please note the Oahu Island Burial Council has not authorized this communication to and with you. Moreover, there will most likely, be a newly elected OIBC chairperson, effective October 12, 2005 before the scheduled OIBC meeting is adjourned.

Until then, I write with considerable disappointment, to you, specifically, in your capacity as the appeals panel chairman with regard to the Kaleikini vs. Keanaaina contested case – the proceedings and decision rendered.

First, in my letter, 10 June 2005, to you I delineated concerns (1) that an OIBC lineal recognition was being appealed? (2) whether or not as an OIBC chair I could serve on the appeals panel? (3) what subjects are appealable involving an Island Burial Council decision(s)? (4) whether or not I could serve on this specific appeals panel? (5) who and how will the Oahu Island Burial Council be properly and fully represented in this matter? (6) DLN&R provides administrative support and/or assistance, including legal representation throughout to OIBC, both collectively and individually, in this case?

Frankly, none of the foregoing concerns were responded by you or legal counsel. Moreover, in the foregoing, I also asked for formal legal opinion from the Attorney General. There is no response, nor were the appeals panel seemingly interested in ascertaining or deeming the foregoing as relevant to the appellate process specific and long term, especially as possibly precedent-setting.)

Next, the appeals panel decision was rendered in June 2005. I responded to Gordon Pang, Honolulu Advertiser, I had not yet received a copy of the panel decision – although I felt disappointed when asked by Mr. Pang.

Fact: No copy from DLN&R was provided to the Council and its Chair until its meeting, 14 September 2005. An overview, I believe was given.

Fact: On 7 July 2005, during the scheduled OIBC orientation, I commented about the appeal decision by (1) noting how the department thru its Historic Preservation Division personnel seemed to be providing all its support to the plaintiff. (2) I asked who then represented the interests of OIBC. (3) The response was I should've served as a panelist.

My reply was for me, there was a clean-cut "conflict"; and, I repeated the query who then represented OIBC in this? No reply occurred.

Fact: The contending parties mutually agreed not to include the OIBC in their respective participation in the Appeal Panel's proceedings. Also, I recall a panelist, Timothy Johns, indicated he'd depend on the OIBC minutes.

The above cited points prompts the following, presuming integrity, justice, responsibility governs the appellate process and the panel's rendering in this case:

- (1) Why is it there was and even "after the fact" there is no referral of the points raised in my June 10, 2005 letter? They weren't pertinent to the proceedings and the panel's principal function adjudication?
- (2) HAR Chapter 13-300-28 Role of the Department "(a) The department shall provide all necessary administrative support services top the council which shall include but not be limited to the following:" (1) to (8); (b), "(c) legal issues may be referred to the attorney general's office for appropriate action." Therefore, what is included if or when? Excluded? Any if or when? Does "may be referred" mean items are referred if who deems the items ought to be referred? What's the criteria for "NOT"?
- (3) HAR Chapter 13-300-2 Definitions "Lineal Descendant ... a claimant who has established to the satisfaction of the Council ... connections to certain Native Hawaiian remains." Chapter 13-300-35 (f) and (h) gives OIBC authority, notwithstanding department data if OIBC so chooses. In effect, OIBC must be satisfied with the information provided by the department. Clearly, OIBC was not. But, why didn't the appeals panel ask OIBC why we were not satisfied with the department's rationale?

 Further, dependence on the executive/close OIBC session minutes as well as the February 2005 meeting minutes were never corrected and voted approved. The closed sessions remain unapproved.

Besides, OIBC required all executive/closed meeting minutes at least from the August 2004 thru the February 2004 meeting. This was not afforded OIBC by the department. Why? It shouldn't change the outcome or should it? Too late now! OIBC was not provided a briefing re/What chapter 5 contains and how the provisions work. Hence, OIBC was totally dependant on DLN&R but, the OIBC position was not supported by DLN&R. Ergo, how can OIBC's position be represented when its representation is bereft since it (DLNR) sided with the plaintiff?

My point? How come the panel chose not to ask the OIBC for its edification – even if plaintiff and defendant had opted not to include the OIBC in their respective presentations? After all, the really contested subject is the OIBC decision re/lineal descendant recognition – not Keanaaina!

But, the department did not assist the OIBC in any of the preliminary, actual and post phases of the appellate proceedings.

Finally, HAR Chapter 13-300-65 Reconsideration and Chapter 13-300-66 Appeals – (1) cites motion to reconsider has only 10 business days to submit. (2) OIBC could've been an aggrieved party throughout. But, no guidance was provided OIBC. Further, if and when aggrieved, special counsel shall be provided by the department – but only in seeking judicial relief. DLN&R did not have it?

There are points that the incumbent SHPD staff did not know regarding why we voted as we did. This is because the Council, collectively, severally, individually has never been asked. Above all, the panel failed to ask.

Finally, Island Burial Council District Representatives are nominated, appointed and confirmed to serve because of their "native Hawaiian" foundation. Presumably, this means they are presumed to decide certain IBC matters based on what is as well as what their "Na'au" guides them to do. How does one measure this with Western form and terms? One doesn't!

Did anyone ask about Na'au? No!

Fact: No one knows, on the record, why I/all voted for "lineal descendancy" to Keanaaina.

Fact: I don't know why all my OIBC colleagues voted as they did!!

As OIBC, I stand with my OIBC members both the majority and the 2 "No" votes. Most importantly, in the adjudication of this precedent setting "contested case", the Department failed to provide appropriate administrative support to OIBC. For this, I'm aggrieved and dismayed since corrective/relief seems highly improbable.

We both know, in the world of boards and commissions, a board decision automatically produces an administrative imperative to see the board prevails. If administratively there's opposition, there's an effort to persuade. Failure to persuade means full support to implement the board fiat. If can't do so, the option is to resign; to oppose is to be fired.

What happened here is the OIBC was depreciated. DLN&R did not protect OIBC. DLN&R did not promote OIBC in this matter.

A. Van Horn Diamond, Chair Oahu Island Burial Council

Motion to accept the minutes with modifications was made and seconded. (McQuivey/Paik)

Discussion: Diamond asked Kanemoto if other typographical or grammatical errors were found later could be corrected or should Council note those at this meeting. Kanemoto replied that Council can notate it to staff.

Amended motion to allow Council to go back and modify any typographical or spelling errors with regards to the minutes was made and seconded. (McQuivey/Paik)

Kruse commented that the minutes were very well done; SHPD staff accepted comments with gratitude.

VOTE: ALL IN FAVOR.

Motion is carried. The minutes are adopted as amended and circulated.

No corrections were made to the executive session minutes of September 14, 2005.

Motion made to adopt minutes of the executive session and seconded. (Keliikoa/McKeague)

VOTE: ALL IN FAVOR.

Executive session minutes of September 14, 2005, are adopted.

V. COUNCIL ACTIONS

A. Discussion regarding appeals process on council decisions [§6E-43(c), HRS and §13-300-51, HAR]

Based on the orientation this Council received, it appears that the areas in which the appeal process is applicable is when the Council makes a determination to relocate or leave in situ pursuant to §6E-43(c). Historically, there have been two appeals on that issue. In the orientation that Council received, it identified only in situ and relocate. Diamond asked how the process was expanded to include more than those two areas.

Kanemoto explained that the Keanaaina family was recognized as lineal descendants to a broad range of specified remains that were disturbed at the Wal-Mart site. There was a challenge to that recognition and the determination was made that it was a constitutional matter because it

affected the potential practice of customary traditional native Hawaiian rights (cultural practices and rights). Kanemoto confirmed that §6E-43(c) does not include that as a category for which contested case hearings or appeals can be held. It was felt that because of the unique nature of the topic of the ruling or determination that was being challenged, the hybrid panel that is specified in §6E-43(c) would be more appropriate for hearing the appeal than a strict Chapter 91 process, which would be before the Board of Land and Natural Resources or an appointed hearings officer.

Diamond asked if what Kanemoto stated is referenced in the ruling rendered by the panel, because they would have to justify their decision. Kanemoto stated that he was not a part of the appeal, therefore, he did not know.

Diamond asked if there should have been a formal legal opinion from the Office of the Attorney General saying that this is a constitutional matter and warrants this kind of appeal process. Kanemoto replied that a legal opinion from the AG's office was not necessarily warranted because there are time constraints when appeals are made and the determination was made that it affected consitutional rights. Therefore, the petitioner in the appeal was entitled to some type of due process so the petitioner's concerns could be heard.

Diamond asked what the basis is of taking up the appeal at this point because until this case, there has only been an appeal in terms to relocate or in situ. Diamond feels that there should be a formal legal opinion to provide guidance to all councils relative to opening this up because in terms of precedent, what else will be subject to the appeal process?

Kanemoto replied that perhaps what needs to be done is for the statute to be amended to include that subject matter as being something that an appeal process needs to be applied.

Diamond stated that his reason for posing these questions was so that all island burial councils are aware that this establishes a precedent. We know that it could question lineal descendancy and cultural descendancy.

Kanemoto stated that the law draws a distinction between lineal and cultural descendancy, and the matter of cultural descendancy has not been considered yet. What was dealt in the Keanaaina appeal was lineal descendancy, and it was felt that because of the nature of lineal descendancy and how it affected the rights of others, including cultural descendants, under the law, the appeal was appropriate.

Diamond stated that in a letter dated June 10 to Peter Young, DLNR Chair, Diamond asked who represented the interests of the Burial Council in the appeal process. The appeal case involved Kaleikini and Keanaaina, but the

decision was made by the Council relative to the issue of lineal descendancy. So in that respect, who represented the interests of the Council because the decision was rendered by the Council.

Kanemoto stated that in the December meeting when the initial matter was decided by the Council, the Deputy Attorney General advising the Council was William Wyhoff and Kanemoto did not know what, if any, type of advice he provided to the Council. However, the matter came up on the agenda in January or February for clarification, and Kanemoto advised the Council at that time. Council made its determination as to recognition or non-recognition. When Kaleikini sought to appeal the decision of the Council, it was determined that the Council was not a party to the appeal—it was the Council's decision that was being appealed. So during the appeal, no one represented the interest of the Council because the Council was not a party in the appeal. The Deputy Attorney General who advised the panel in that appeal was Linda Chow.

Diamond understood that under the rules, the Department shall provide administrative assistance and support to the burial council to include legal representation, collectively and individually. He asked what is the administrative support and assistance to the Council when its decision is being questioned and challenged and Council is excluded from the process.

Kanemoto maintained that the Council would not be a party in an appeal, even if the appeal were a determination on preservation or relocation of iwithe Council's decision would be the subject matter of the appeal. The staffing that Diamond talks about is only for the Council meetings, where the SHPD staff and the Deputy Attorney General provide support and resources for information on internal policies, procedures, the law, and questions relating to native Hawaiian burials. When there is an appeal, the Council is not a party in the appeal and is not represented.

Kanemoto explained that if two parties went before a judge in circuit court and the judge's decision gets appealed to the State Supreme Court, the two parties, the appellant and the appellee, would be the parties involved in the appeal. The circuit court judge would not be a party involved in the appeal; it would be that judge's decision that would be the subject matter of the appeal and the supreme court would receive briefs from the appellant and the appellee but not from the circuit court judge. So when the Council is making a decision at these meetings, it is acting as arbiters (quasi-judicial body) making a decision that is legally enforceable.

(Tape 1, Side B)

Diamond asked, "Who looks out for the Burial Councils' authority to protect it so that it's only going after that particular decision in the appeal process?"

Oahu IBC Meeting October 12, 2005 Page 8

Kanemoto replied that what it boils down to is the law. The factual underpinnings that gave rise to the decision and under the applicable law, the decision was correct.

Diamond asked, "How does the Council achieve guidance during the course of the procedure?" Because if the Council believes itself aggrieved, it is entitled to separate legal representation provided through the Department to pursue it. Kanemoto again replied under the law the Council is not a party in the appeal process. Diamond responded that that is not what the rule says. Kanemoto said that the Council seeks advice from its attorney during its open meeting when it is making the decision which later becomes the subject of the appeal. Diamond said that the rules say that if the Council is aggrieved and feels the need to pursue it, it can only be pursued by going to court. When it goes to court, then the Council would need its own attorney. Diamond added that if Council had that legal guidance throughout the process, perhaps you wouldn't have to go that way because then it would be clearer.

Diamond also said that after the decision was rendered, he was asked by newspaper reporter Gordon Pang what Diamond thought of the decision. Diamond replied to Pang that he was disappointed, but he would wait until he saw a copy of the decision. Diamond said that he or any of the Council members never received a copy of the decision until the last Council meeting. Diamond stated that the rules say that the Council has ten business days if it is grieved to appeal it. How does the Council appeal if the deadline has passed? Diamond added that even if the Council didn't have the ratio, he thought that the Chair could have acted if the Council members agreed to be aggieved.

Kanemoto explained that the way the hybrid panel was set up, the Chair of the council that made the decision is supposed to be on this panel. Diamond stated that he wrote a letter to Peter Young dated June 10 in which he indicated that Diamond did not believe that it was appropriate for the Chair of the Oahu Island Burial Council to sit on that particular panel because the Chair was a party to the decision that was rendered. Diamond felt that would have tainted the outcome, so he chose to withdraw.

Kanemoto stated that as he interprets §6E-43(c), the reason for the chair of the council that rendered the decision to serve on the panel is so the chair would provide the council's perspective on the matter.

Diamond said that on June 10, he asked for a formal ruling from the Attorney General whether or not Diamond could sit on that appeal panel (for the Kaleikini case). To this date, Diamond has not received a response to that letter.

Diamond recommended that in the event there is another appeal, the Council should have an orientation as to how exactly the appeal process works and what all the rules are so that the Council can make the kinds of decisions it needs to. Kanemoto stated that if, during an open meeting, the Council anticipates that a determination might be appealed, it can go into executive meeting and discuss the aspects of a possible appeal with the attorney staffing the meeting. During that time, the Council would receive all the advice that it is seeking on the matter. Kanemoto said that once Council makes its determination, particularly if the decision is preservation or relocation, then the matter falls into §6E-43(c) territory and then it becomes a simple matter of the appeal process as it is spelled out in the rule 351.

Paik felt that any decision the Council makes can be appealed. Kanemoto stated that §6E-43(c) gives the statutory right to appeal for determinations on preservation or relocation. In the situation where the decision on recognition for lineal descendancy was sought to be appealed, it was determined that there were constitutional rights involved, therefore, the appeal was appropriate. Kanemoto added that not every single determination or recommendation made by this Council is subject to appeal.

Paik stated that the State explained to the Council during orientation the meaning of lineal and cultural. The decision made by the appeal showed that the decision was in error because the Keanaainas could not prove their lineal descendancy. Paik felt that the Council cannot be overly cautious about every matter that comes before the Council. If the Council makes an error and a decision is appealed, she felt that the Council should just move on because the Council cannot possibly know everybody's geneology. The Council just has to accept what is presented to them and make their decision. If the decision is an error and the families choose to appeal, that is in their right. She didn't think that the Council should feel that it needs to have legal representation.

Diamond stated that he was not questioning the decision relative to whether lineal descendancy was confirmed or not confirmed and that the decision was vacated. He is addressing the issue of process to make sure the next time it happens, it's clearer than before and the Council knows its role. He stated that this is the first time that there has been a decision in this area. Kanemoto added that an appeal was not addressed or not anticipated because §6E-43(c) does not talk about it.

Diamond stated that there have been two other cases that were appealed: one on Maui and one on the Hawaii Island. The Maui chair did not serve on the appeal panel; the Hawaii IBC chair also did not serve on the appeal panel. Diamond served in lieu of the Hawaii IBC chair and he could not understand why he was being chosen because that was not the practice.

In the process for the Hawaii IBC decision on relocation, the Hawaii IBC was brought on to provide information as a witness. In the Kaleikini-Keanaaina case, both parties agreed not to include anything from the Burial Council. Diamond added that Timothy Johns made the remark that he was going to base a lot of his decisions at the appeal process on the minutes of the proceedings.

Guest Halealoha Edward Ayau, Executive Director of Hui Malama I Na Kupuna O Hawaii Nei, commented that his understanding is that Council determinations are subject to appeal, specifically, Councils' determination to relocate or preserve in place. This Council submitted determination in identifying lineal descendants and his understanding was that was the basis for the appeal. It makes sense to Ayau that there are constitutional rights involved that supported that appeal.

Ayau commented on the concern that Diamond raised about who watches out for the Councils' interests on the appeals panel. He stated that Council chairs are included in the hybrid panel so that they could represent the Councils' interest. He stated that the panel was created to have three Burial Council chairs and three Land Board members. The Council chair of the council being appealed was not excluded from serving on the hybrid panel, but the previous two Council chairs felt the same way Diamond felt — they wanted to serve on the panel, but they thought it was better to sit it out.

Ayau expressed his concern about the timeliness of this issue being brought up. He stated that this issue should have been addressed in a timelier manner.

Ayau stated that the appeal is completed and a decision was reached. His question now is what will the OIBC do now so the burial can move forward? He stated that his family, the Townsends, were recognized as cultural descendants in that case, and they are waiting to be able to support the reburial of these kapuna. He urged the Council to do whatever it needs to do to make it happen.

Greenwood stated that Kanemoto mentioned at the last meeting the reason the reburial could not happen was because the AG's office was pursuing other things in the civil case. Kanemoto stated that because there was an on-going investigation/enforcement action which is expected to reach its conclusion soon and which may result in civil/administrative penalties being sought against certain entities, he could not disclose too much information. However, he did state that the reason the iwi have not been reinterred yet was because he and Deputy Attorney General Jay Page did not allow law enforcement investigators to photograph the iwi for evidentiary purposes because they felt it was highly inappropriate. Therefore, in the event there is a contested case hearing, the iwi needs to be available for evidentiary